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IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

Report by Mr. Maurice Glélé-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, submitted pursuant to Commission on Human Rights resolution 1996/21

CONTENTS

	Paragraphs	Page
Introduction	1 - 8	3
I. ACTIVITIES OF THE SPECIAL RAPPORTEUR IN 1996	9 - 16	4
A. Participation in the fifty-first session of the General Assembly	9 - 11	4
B. Missions to the field and sundry observations	12 - 16	4
II. CONTEMPORARY MANIFESTATIONS OF RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA	17 - 34	5
A. Contributions by Governments and public bodies to action to combat racism	18 - 19	6
B. The Centre for Equal Opportunities and Opposition to Racism in Belgium	20 - 21	9
C. Discrimination against Blacks, negrophobia	22 - 23	10

CONTENTS (continued)

		Paragraphs	Page
D.	Racism and racial discrimination against Arabs	24 - 26	11
E.	Anti-Semitism	27	11
	1. Decline in violent acts 2. The Jewish stereotype 3. Islamist and Arab anti-Semitism 4. Anti-Semitism on the Internet		
F.	Discrimination against the Romanies or Gypsies	28 - 30	14
G.	Discrimination against migrant workers	31 - 34	15
III.	ACTION BY GOVERNMENTS	35 - 40	17
IV.	COMMUNICATIONS RELATING TO ALLEGATIONS OF RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA	41 - 129	19
A.	Angola	43 - 46	19
B.	Australia	47 - 54	19
C.	Austria	55 - 77	20
D.	Canada	78 - 81	23
E.	Côte d'Ivoire	82 - 84	24
F.	United States of America	85 - 92	25
G.	Russian Federation	93 - 95	28
H.	France	96 - 116	28
I.	Indonesia	117 - 119	33
J.	Israel	120 - 126	36
K.	India	127	37
L.	Italy	128 - 129	37
V.	CONCLUSIONS AND RECOMMENDATIONS	130 - 133	38

INTRODUCTION

A. Background

1. The mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance was established for three years by the Commission on Human Rights by resolution 1993/20. By its decision 1993/258, the Economic and Social Council confirmed the mandate and assigned it to Mr. Maurice Glèlè-Ahanhanzo.

2. The Special Rapporteur submitted annual reports (E/CN.4/1994/66; E/CN.4/1995/78 and Add.1; E/CN.4/1996/72 and Add.1 to 4) to the Commission at its fiftieth, fifty-first and fifty-second sessions. Since 1994, the Commission has invited him to report to the General Assembly. He thus presented interim reports to the General Assembly at its forty-ninth and fiftieth sessions (A/49/677 and A/50/476).

3. At its fifty-second session the Commission, by resolution 1996/21, expressed its full support and appreciation for the Special Rapporteur's work and decided to extend his mandate for a period of three years so that he could examine incidents of contemporary forms of racism, racial discrimination, any form of discrimination, inter alia, against Blacks, Arabs and Muslims, xenophobia, negrophobia, anti-Semitism and related intolerance, as well as governmental measures to overcome them, and to report on those matters on a yearly basis to the Commission, beginning at its fifty-third session, and to the General Assembly at its fifty-first session.

4. The Economic and Social Council having approved the renewal of the Special Rapporteur's mandate for three years by decision 1996/259, the Special Rapporteur submitted an interim report to the General Assembly at its fifty-first session (A/51/301).

5. This report supplements that submitted to the General Assembly, thereby providing a comprehensive response to the Commission's request as indicated in paragraph 2 above. It comprises four chapters followed by conclusions and recommendations: chapter I deals with the Special Rapporteur's activities in 1996; chapter II deals with manifestations of racism, racial discrimination and xenophobia; chapter III concerns action by Governments; and chapter IV covers communications on allegations of racism, racial discrimination and xenophobia.

6. The Special Rapporteur has received and made use of the information supplied by Governments and non-governmental organizations 1/ in response to the note verbale and letter sent to them by the Centre for Human Rights on 19 April 1996.

B. Working method

7. Before embarking on the various aspects of this report it should be explained that, since his mandate had remained essentially unchanged, there is no need to redefine the working methods and concepts which the Special Rapporteur has described at length in previous reports. 2/ The phenomena studied are also unchanging in their nature, causes and vectors. 3/

8. Still, some emphasis should be placed on the use of modern communications technology, including the Internet, as a vehicle for incitement to racial hatred and xenophobia against Arabs, Blacks and, in particular, Jews. Racist messages tend to proliferate on the worldwide computer network, the Internet, and as things currently stand no national legislation can check the spread. 4/ There has also been a resurgence of claims that the Nazi holocaust never took place, and of the theory that not all races are equal.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR IN 1996

A. Participation in the fifty-first session of the General Assembly

9. In his statement to the Third Committee, the Special Rapporteur emphasized that, worldwide, the question of racism and racial discrimination remains troubling and is crystallizing around the current immigration crisis. Increasingly restrictive and discriminatory legislation is encroaching on individuals' freedom of movement and residence and their right to live with their families. Furthermore, racist ideology is being spread using the most up-to-date information technologies, and racist violence is manifesting itself in arson at places of worship and in the desecration of ethnic minorities' cemeteries.

10. The delegation of Singapore bitterly attacked the Special Rapporteur for the way he described the discrimination that migrant workers in some Asiatic countries suffer, while stating that "Singapore has very strict laws. Some may even call them harsh laws ...". As regards the sentencing to death and execution in 1995 of Flor Contemplación, a housemaid in Singapore, 5/ the representative of Singapore stated that "there is an elementary factual error. Flor Contemplación was never accused of murdering her employer. She was charged, tried and convicted of murdering a fellow Filipina, another domestic servant and her ward, a four-year-old Singapore boy". He added that "while relations between the Philippines and Singapore did deteriorate for a period from March 1995 after the execution of Flor Contemplación, the matter did not end there. Relations between the two countries were restored in the same year". The Special Rapporteur has taken note of this statement.

11. Such invective aside, the General Assembly once again expressed its support for the Special Rapporteur's work, requesting the Secretary-General to provide him, without any further delay, and like the other Special Rapporteurs, with all necessary human and financial assistance to enable him to carry out his mandate efficiently and diligently.

B. Missions to the field and sundry observations

12. The Special Rapporteur undertook two missions: first to Colombia, between 28 June and 15 July, and secondly to Kuwait, between 16 and 28 June 1996. The purpose of his mission to Colombia was to investigate the situation of the indigenous and Afro-Colombian population groups. His visit to Kuwait was concerned with the status of migrant workers, in particular domestic servants, and the Bidun - the people "without papers" or "without nationality". The reports on these two missions are available to the Commission (E/CN.4/1997/71/Add.1 and 2).

13. As indicated in his report to the General Assembly, it was the Special Rapporteur's intention to make observations on the detailed comments submitted to him by the Government of the United States of America concerning his mission to the country in 1994. He had taken care to consult non-governmental organizations and people he met during the mission, who provided him with information for his report. He would like to express his gratitude to the International Human Rights Association of American Minorities, Meiklejohn Civil Liberties Institute, Admiral Family Circle Islamic Community, University of San Francisco Law Clinic, Human Rights Advocates and the sociologist Mrs. Loretta Williams, who sent him detailed accounts confirming the substance of the matters related in his mission report.

14. The Government of the United States gave him to understand, however, that since it had not expressly asked him to publicize its comments, it would not be standard practice for him to do so. In any event, the reactions of the United States and the various comments made can be consulted at the Secretariat.

15. It remains true that racism and racial discrimination persist, structurally, economically, socially and culturally, in the United States, as demonstrated in the report Affirmative Action Review by Mr. George Stephanopoulos, Senior Adviser to the President for Policy and Strategy, dated 19 July 1995:

> "There has been undeniable progress in many areas. Nevertheless, the evidence is overwhelming that the problems affirmative action seeks to address - widespread discrimination and exclusion and their ripple effects - continue to exist ..." 6/

16. Mention also needs to be made of the recent Texaco affair, 7/ the fires in black community churches, police brutality in New York, 8/ the discriminatory application of the death penalty in the State of Georgia 9/ and incitements to racial hatred and anti-Semitism appearing on the Internet. 10/ The ratification by the United States of the International Convention on the Elimination of all Forms of Racial Discrimination is clearly a signal advance in the campaign against racism, xenophobia and anti-Semitism; but resistance is being put up in some quarters and there remains much to do to ensure that human dignity is respected.

II. CONTEMPORARY MANIFESTATIONS OF RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

17. The various forms of racism, racial discrimination and xenophobia identified by the Special Rapporteur and considered by the Commission continued to manifest themselves in 1996. The salient facts are set out below.

A. Contributions by Governments and public bodies to action to combat racism

18. The Government of Cuba stated that:

"At the dawn of a new millennium we are all indignant witnesses to a rebirth and recrudescence of racist propaganda, incitement to ethnic hatred, and practices betraying feelings of racial and xenophobic superiority and exclusivity while at the same time extreme-rightist political organizations and neo-Nazi parties are emerging in developed societies and operating with complete impunity.

"Freedom of expression and association cannot continue to be used as a means of or pretext for fomenting or tolerating xenophobic hatred and violence: that would be an unacceptably biased and retrograde view of how expression should be given to human rights.

"Racism would appear to be a universal evil, but in the global context, one cannot but remark that it is at its most alarming and perfidious in the developed world. Strategies to combat racism must not lose sight of this fact if efforts are not to be dissipated and priorities muddled.

"When barriers are erected against immigrants, or deep cuts are made in welfare budgets, or programmes intended to encourage the social integration of minorities are dismantled, all with complete sang-froid and disdain for the human condition, and when the most basic rights to education and health denied to the children of immigrants, as Act No. 187 of the State of California in the United States would do, these practices are becoming institutionalized.

"Even as the Commission on Human Rights was in session, the entire world was shaken by dreadful pictures of the ill-treatment and beatings inflicted on a group of Mexican immigrants, including women and children, in the United States near the border between the two countries. But what we saw was not the whole story, because similar and worse incidents occur there almost every day with no indiscreet camera around to record them.

"The Special Rapporteur and the United Nations itself must take up the challenge, tackling the problem of eliminating racism and its side effects from the face of the Earth with renewed vigour and energy.

"Tireless efforts to attain the goals and objectives of the Third Decade to Combat Racism and Racial Discrimination are essential. Additional financing must also be made available for that purpose.

"Cuba therefore believes it vital for all parts of the United Nations which are involved in the programme to carry it out more determinedly; in that context, as we have said before, we believe that the efforts of the Special Rapporteur and the Commission on Human Rights are of the greatest importance.

"Cuba is broadly sympathetic to the desire to hold a world conference under United Nations auspices before the end of the century to consider contemporary forms of racism and racial discrimination and draw up effective strategies for opposing them. We hope your consultations on the matter will lead to the realization of this desire."

19. The Turkish Government is of the opinion that:

"Racism is one of the most serious problems affecting the contemporary world. People are being denied their basic rights; their houses, shops, mosques, churches and synagogues are burned to the ground; they are beaten up, maimed and even killed; and all this in the name of an evil we call racism, which does not leave its victims alone even after they die: the number of cemeteries that are being desecrated is growing at a worrisome pace.

"What is this evil phenomenon which has led to untold horrors in the past, and is still causing immense anguish and pain in today's relatively civilized world? Many explanations have been forwarded by differing circles. But there is one essential fact which we cannot afford to overlook: racism is a malignant state of mind whereby one human being despises and maltreats another one of his kind without any reason except physical difference. There is no conflict in the case of racism. Conflicts take place between at least two parties which compete for gaining advantage over a given material or moral stake. The stake may be land, or political power, or economic benefit, anything which brings about a certain advantage. But in racism there is no stake, let alone a competitive one. There is no relationship at all between the victim and the racist. There is only one party actively involved. The victims are not even aware of the sinister danger until they are victimized. They do not provoke or warrant the treatment they are given. It is worse: their very existence is a provocation for those whose minds are warped by racism.

"Racism is unilateral, and is not precipitated by any stake. Hence, the non-causal nature and the irrationality of racism on the one hand; and the innocence par excellence of the victim on the other hand. The irrationality of racism makes it even more dangerous because there is no logical cure which may be found. As such, racism is diametrically opposed to the basic tenets of human rights and civilization. It does not belong to the world we call our own.

"Therefore, racism must be combated with all available means. However, in order to effectively combat racism and ensure its eradication, we first need to elaborate a comprehensive diagnosis of the problem. In this context, we should first distinguish the visible manifestations of racism, from its more subtle forms. A recent study commissioned by the ILO on racial discrimination in the employment market constitutes a vivid example in this regard. Another feature of racism is its ability to successfully adapt to the changing environment. Suffice it to mention that in the contemporary world which emphasizes

human rights much more than before, racism has been able to present itself as a defender of human rights under the cloak of 'cultural relativism'. 11/

"Second, we must prove to be able to devise measures to combat the current manifestations of racism, as well as medium- and long-term plans to ensure that racism will be deprived of an environment where it can prosper and spread.

"In order to forge ahead with the foregoing, it is also vital to fully grasp what has been done so far and where we actually stand in our combat against racism.

"The United Nations system has been active, but not sufficiently effective, in the combat against racism. This is evidenced by the necessity felt to proclaim a third decade to combat racism and racial discrimination, which shows that the first two decades in this respect have not been able to eradicate this scourge.

"On the contrary, racism, racist violence, xenophobia and related intolerance have been steadily on the rise. This is indeed why a second and more practical mechanism to combat racism was established by the United Nations human rights system. When we examine the development which gave birth to the post of special rapporteur on racism, the first founding element we detect is the Secretary-General's report entitled: 'Measures to combat racism, racial discrimination, and the role of the Sub-Commission on Prevention of Discrimination and Protection of Minorities'. The Government of Turkey believes that this report, contained in document E/CN.4/Sub.2/1992/11, lays down the basic guidelines to properly diagnose the contemporary forms of racism.

"It is against the background set by the contents of the above-mentioned report that it has been possible to establish a Commission on Human Rights special rapporteurship to deal with the question of racism. From the very beginning, Turkey has taken the lead in submitting the relevant resolutions to the Commission. It is a welcome development that, again on the initiative of Turkey, the Commission adopted resolution 1996/21, which provided for the extension of the Special Rapporteur's mandate for another three years.

"Nevertheless, we must also recognize that, ever since assuming his post, the Special Rapporteur has made it known that he is not endowed with the financial and personnel resources which the proper discharge of his duties require. The remarks made by the Special Rapporteur to this effect have been duly reflected in the relevant resolution adopted by the Commission, and complemented with appeals to the Secretary-General to remedy this situation. Despite these appeals, which have been made with increasing emphasis, the Special Rapporteur was not able to submit addenda 2, 3 and 4 of his report in time for due consideration at the last session of the Commission. The Government of Turkey believes that, given the vast dimensions of the problem, the question of allocating the necessary resources to the Special Rapporteur must be solved urgently.

"Reports of racist incidents, ranging from discrimination to extreme forms of violence, continue to pour in from rather specific parts of the world. The Special Rapporteur should continue to make the best possible use of the communications which he receives as well as the relevant news items appearing in the mass media. While dwelling upon the media, the Special Rapporteur should also examine this far-reaching dissemination machinery from the angle of paragraphs 3 and 8, as well as operative paragraph 6, of Commission on Human Rights resolution 1996/21. For the first time, the question of using the mass media to incite violence based on racist motivations has been included in a resolution adopted by the Commission. This new element needs to be addressed with due focus."

B. The Centre for Equal Opportunities and Opposition to Racism in Belgium

20. In its 1995 report, the Centre for Equal Opportunities and Opposition to Racism in Belgium states:

"Between 1 January and 1 October 1995, 665 complaints were lodged, 338 (52 per cent) of them from Dutch speakers, and 306 (48 per cent) from French speakers. A fifth of all complaints from Dutch and French speakers alike related to perceived discrimination in entry into and residence within the country. The Centre also receives complaints about public services and disputes in daily life, each of these categories accounting for 11 per cent. Then there are complaints of discrimination in employment (10 per cent); last comes the delicate matter of relations with and vis-à-vis the forces of law and order - the 'law and order' sector accounts for 9 per cent of complaints." 12/

On the subject of the victims' profiles, the report says that

"63 per cent are Belgian, many of them naturalized. The largest group of non-Belgians are Moroccans (10 per cent), followed by Zairians (5 per cent), Turks (4 per cent), and Italians (2 per cent). The remaining 16 per cent are a diverse group of people from the former Yugoslavia, Romania, Liberia, Poland, Ukraine, Egypt, Algeria, Nigeria, India, Ghana, Rwanda, Peru, Tunisia, Guinea, Bangladesh and so forth."

21. The report also says:

"... most of the complaints about residence concern expulsion or obtaining a visa and work permit.

"Almost all the complaints are lodged against public institutions, and in over half of all instances they are specifically concerned with the Aliens Office. Two thirds of the cases are reported by people belonging to an organization or group, who are all the more indignant that no account is taken of the victims' often difficult personal circumstances. There are often complaints of over-long procedures, probably due to negligent handling of the file in the service concerned.

"In the 'daily life' sector, most of the problems reported relate to social conflicts in the victims' immediate entourage or neighbourhood. Besides these, again in the 'daily life' sector, there are incidents of verbal or physical aggression against aliens, elderly people being disturbed by groups of youths, racist remarks and harassment. The complainants are mainly individuals who often feel they are being discriminated against on account of their origins. The complaints tend to be lodged against acquaintances, who may be in the individual's immediate entourage.

"The Centre finds that these are very often situations in which violence plays a large part.

"Refusals to register a person in a commune, to publish banns of marriage or celebrate a marriage, or to grant welfare or financial assistance are some examples of the complaints reaching the Centre which concern the public services. In such cases, complainants feel they are being discriminated against because of their residency status. Complaints often concern the communes, public services par excellence, with which people have dealings from the day they are born to the day they die. The Centre observes that if the public services handled applications properly, a good many complaints would never have been reported.

"Fourth among the most frequent problems comes employment - basically discrimination in the workplace and in hiring. But harassment and racist remarks at the workplace, like racist jokes, are also common. The complainant is often reluctant to raise the matter, especially if the complaint may be followed up. When the complainant is a member of one of the unions with which the Centre has a cooperation agreement, the case is followed up with the union concerned. Other bodies, Forem or Orbem for instance, become involved in handling complaints. Complainants feel they are being discriminated against on account of their origins, skin colour or nationality.

"During its consideration of these complaints, the Centre did not have enough evidence in one case in four to determine whether discrimination really existed."

C. Discrimination against Blacks, negrophobia

22. Besides the continual incidents of negrophobia referred to elsewhere, the distinctive feature is the use of the Internet to spread racist messages against Blacks. According to a study entitled "The Web of Hate", a site under construction by the organization White Arian Resistance, bearing the legend "this is a white racist web page!" shows a caricature of a Negro. 13/

23. As this report was being finalized, the Special Rapporteur received a quantity of documentation from Caucasians United for Reparation and Emancipation (CURE) on racial discrimination against African Americans in the United States. The brochure can be consulted at the Secretariat.

D. Racism and racial discrimination against Arabs

24. Most of the information received relates to the status of Arab Americans. The American-Arab Antidiscrimination Committee, in its 1995 report, 14/ speaks of a resurgence of anti-Arab sentiment in the United States following terrorist incidents such as the 1995 bomb in Oklahoma City, which was immediately attributed to Arabs, and events relating to the crisis in the Middle East. The Committee also stresses that the media tend to lump Arabs and Muslims together with terrorists and spread an unfavourable image of Arabs:

> "Today, the media's villain of choice seems to be the Arab. Stereotypical images of Arabs have changed over the years from exotic belly dancers, to desert bedouins, to oil-rich sheiks. Today, the Arab is typically portrayed as a terrorist. The richness and diversity of the Arab culture is lost to such harmful stereotypes, which help construct a negative image of the Arabs among the American public.
>
> "Media stereotypes are not to be taken lightly, especially when they are as rampant and pervasive as in the United States media ... Instances of anti-Arab defamation in the media are too great to enumerate ...". 15/

25. The Committee also mentions the use of the Internet to spread propaganda against the Arabs in general and Arab Americans in particular. "Following the outbreak of the Persian Gulf war, the Internet was full of vicious, obscene and racist material." 16/

26. The Committee decries the discriminatory treatment of Arabs and Arab Americans by airlines in the United States, by security agents at airports and by the police in general, and discrimination in education, employment and housing.

E. Anti-Semitism

27. The Special Rapporteur received from the Israeli Government a report from which he has taken the extracts below on major anti-Semitic trends around the world: 17/

> "Some of the trends noted in 1994 continued and seem to have become an acceptable part of reality: techniques for disseminating anti-Semitic propaganda are improving in sophistication in reaction to government policies of imposing bans and legal constraints, and links and coordination among extremist groups are being strengthened. Moreover, a distinction is still made between moderate messages aimed at the larger voting public and cruder messages designed for internal consumption in radical circles. The moderate messages touch upon sensitive points, such as foreign workers and the danger they allegedly pose to a country's society and culture, or the bearing they have on civil rights in that country. Candidates in electoral campaigns try to prove their attachment to authentic national and local elements, as opposed to foreign ones arousing fear and hatred, which are symbolized

by the Jew. This notion of world Jewish domination is disseminated by all means of modern communication, especially the Internet, which legally is still accessible to everyone.

"1. Decline in violent acts

"A considerable decrease in violence directed against Jews in Western Europe was registered in 1995 at the database of the Project for the Study of Anti-Semitism. This followed four years of a steady increase, most notably in Western Europe. The exceptions in the Western world are Canada, Australia and Sweden. In the Commonwealth of Independent States, especially Russia, even the lack of full and reliable information cannot obscure the steady increase in violence. The 1994 level in Eastern Europe was maintained in 1995, and very few cases of violence were registered in Latin America. The decline was especially significant in the category of attacks and attempted attacks with the potential to cause loss of life.

"Not all the reasons for this decline are discernible; in fact, the ups and downs of anti-Semitism have never been fully understood. Yet, one might assume that at least in part it is the result of more stringent enforcement of existing and new anti-racist and anti-terrorist laws, brought about through joint efforts of Jewish and other national and international organizations and agencies, ranging from the Anti-Defamation League and the World Jewish Congress to the European Union and the United Nations Human Rights Committee, and from security services to parliaments and juridical associations.

"Since the beginning of the 1990s extreme right-wingers and Muslim extremists have been the two main elements perpetrating violence against Jews in Western Europe. While right-ring extremists were behind many acts of harassment and vandalism against communal sites and Jewish property, violent attacks with the intent of causing bodily harm were perpetrated in most cases by Muslim extremists. The latter factor has not been taken into account in various assessments dealing with anti-Semitism in Western Europe.

"From the beginning of the 1990s, a clear correlation between dramatic events in the Middle East connected to the Arab-Israeli conflict and a rise in the number of attacks against Jews was observed. In 1991, in the wake of the Gulf war, there was a marked increase in attacks against Jewish targets. The deportation of 415 Hamas activists to Lebanon in January 1993 and the Hebron massacre in March 1994 led immediately to a significant rise in violence against Jews in Western Europe. In 1995 no similar event occurred in the Middle East that could lead to a significant rise in violent activities by Arab and Muslim extremists ..."

"2. The Jewish stereotype

"The image of the Jew as a subversive element aiming at 'world Jewish domination' remains at the core of various extremist ideas. In Japan, popular books warn against Jewish and Zionist plots to use their

world economic power to destroy Japan in a matter of years. In the United States, Black separatists accuse Jews of having been slave traders, and of deflecting attention from their crime by bringing to centre stage their fabrications about the Holocaust, thus obscuring their image through Jewish control of Hollywood and the media. These and other arguments were used this year, especially by Minister Louis Farrakhan, leader of the Nation of Islam.

"It seems that while violence is on the decline, public and national debates produced in 1995 continued to generate a vast variety of anti-Semitic literature and publications, not letting Jewish-related issues get off centre stage.

"The obsessive usage of the Jews by those opposing progress and democracy has not diminished in the former Soviet Union and Eastern Europe. During the electoral campaign in Russia in 1995 and the presidential campaign for the June 1996 elections, the 'Zionist threat' and Jewish and Masonic conspiracy theories abounded. Nationalists, or 'patriots', as all those who hate everything that is not Russian define themselves, used the Jews as a convenient means to explain everything that went wrong or was about to go wrong. Father Jankowski in Poland accused Jews of 'satanic greed' in a sermon in Gdansk in the presence of the former president, Lech Walesa; and in Romania a weekly magazine published an article by its owner, the leader of the Romanian Ecologist Movement, in which he practically accused Jews of 'ritual murder'.

"3. Islamist and Arab anti-Semitism

"The link between Middle Eastern events and activities perpetrated against Jews stems from the basic concept of Muslim extremists that Zionism is an integral part of Judaism and that Israel and the Jewish people are one entity. The distinction between anti-Semitism and anti-Zionism is frequently blurred in statements and articles by political and spiritual leaders of Iran and Middle Eastern organizations that inspire and finance extremist Islamic groups in Western Europe.

"However, violence in Western Europe against Jews and Jewish targets is not necessarily a response to dramatic events in the Middle East. Activists of extremist Islamic groups such as Hizb ut-Tahrir and the Algerian movements Front islamique du salut (Islamic Salvation Front - FIS) and Groupe islamique armé (Armed Islamic Group - GIS) operated in 1995 against Jewish communities in several countries in Western Europe, spreading hate propaganda and perpetrating violence without a clear linkage to the Arab-Israeli conflict. It must be stressed, however, that the absolute majority of the Muslim population in Western Europe is not affiliated with extremist groups.

"Three points should be noted about Muslim extremists: (a) they have strengthened their international contacts, operating mainly under Iranian influence and both with and without connection to events in the Middle East; (b) outbursts of anti-Semitic violence have tended to accompany dramatic events in the Middle East - and none occurred in 1995; (c) the dispute over the peace process in the Middle East produces

anti-Semitic utterances and publications on the part of extremist circles. One might say that while part of anti-Semitism in Christian countries in recent decades has become anti-Zionism, in the Muslim world anti-Zionism appears to be turning into anti-Jewish manifestations, thus broadening a political and territorial conflict into a clash between ideological and religious world views. The use of Christian and secular European anti-Semitism motifs in Muslim publications is on the rise, yet at the same time Muslim extremists are turning increasingly to their own religious sources, first and foremost the Qur'an, as a primary anti-Jewish source.

"4. Anti-Semitism on the Internet

"The Internet has become the new battleground in the fight to influence public opinion. While it is still far behind newspapers, magazines, radio and television in the size of its audience, the Internet has already captured the imagination of people with a message, including purveyors of hate, racists and anti-Semites. On the Internet, one can disseminate a large amount of material at a relatively low initial cost, regardless of the size of the audience. Those materials may include not only text, but also charts and tables, photographic images, sound recordings and video clips. There are various possibilities for interactive dialogue and discussion.

"Most of the anti-Semitic material on the Internet today comes from the United States and Canada and is in English. This is not surprising, as the Internet began in the United States and has had its greatest penetration into society at large there. However, use of the Internet has become common throughout the industrialized world, and we are now witness to the appearance of anti-Semitic sources throughout the globe. Due to open international access, most sources are available in English, instead of or in addition to the national language."

F. Discrimination against the Romanies or Gypsies

28. Street children in Bulgaria, most of them Romany, often fall prey to attacks by skinheads. They may be called "dirty Gypsies" and beaten with chains or baseball bats under the indifferent gaze of the police, who sometimes ill-treat the children themselves. 18/

29. In Bucharest, in Romania, Romanies suffer violence at the hands of individuals, at which the police connive. The attack on a Romany community in the Curtes Ages district on 12 and 14 June 1996 is an example: one house is said to have been set ablaze and five others damaged by a group of people from the district in full view of the police. 19/

30. In Czechoslovakia, 181 attacks on Romanies are said to have been reported in 1995. Being "at the bottom of the social ladder, Roma face daily discrimination in housing, education and employment. They are often segregated in 'special schools', denied residency permits and refused jobs solely because of their ethnicity. Since January 1993, Roma have been negatively affected by the Czech citizenship law, which came into effect after the split of Czechoslovakia. A large number of Roma are now without Czech

citizenship, even though they are long-term or life-long residents of the Czech Republic. Some of them are now stateless, others have been deported to Slovakia. Evidence suggests that the law was drafted with the specific intent of removing Roma from the country." 20/

G. Discrimination against migrant workers

31. Immigration, which is growing, provoking discriminatory measures and xenophobic reactions, is a worldwide phenomenon. In Africa, America, Asia, Europe and the Pacific, discriminatory barriers are being thrown up against men and women who, looking for a better life, set out in hopes of finding a place in what is said to be the "global village" but turns out to have neighbourhoods closed off to some by legislation alluding directly or indirectly to racial identity, national or ethnic origin or preference for nationals.

32. All over the world, immigrants have become easy scapegoats and sacrificial victims of economic crises or insecurity. Labelled "illegal" or held responsible for all the problems of the countries where they live (unemployment, crime, contagious disease, insecurity, social security deficits), immigrants, whether legally in the country or not, face an increasingly precarious existence. Xenophobia is growing at an alarming rate, and most of the world's most democratic peoples, supposedly devoted to such civilized values as the dignity of the individual, do not care.

33. Holding camps, where aliens are dumped in often unacceptable living conditions before being expelled, are multiplying throughout the world. Electric fences are springing up at frontiers. Those who try to cross them are dealt with harshly.

34. Against this background, the Mexican Government submitted information on Mexican workers entering the United States of America:

> "The Government of Mexico, given the incidents in Riverside County, California, in March and April 1996 when Mexican nationals were beaten and some lost their lives, has expressed its indignation to its United States counterpart and forcefully condemned violations of its nationals' human rights, stating that the clear abuse of authority displayed in those incidents confirms the urgent need for determined action to stamp out discriminatory attitudes which spill over into acts of institutional violence.
>
> "With all due respect for the sovereign right of the United States to define and enforce its migration policies, given the recent tightening up of border controls, the Government of Mexico emphasized the need for those policies to be applied with strict respect for migrants' dignity and human rights.
>
> "The Mexican Government maintains an ongoing dialogue with the United States migration authorities through a variety of bilateral mechanisms including Mexico-United States Binational Commission working groups on migration and consular affairs; border affairs liaison machinery; and consultation machinery on the functions of the

Immigration, Naturalization and Consular Protection Service. Respect for migrants' human rights is a key item on these bodies' agendas.

"On the reform of the legal framework governing immigration in the United States, which is due to be approved by the United States Congress, the Mexican Government repeated to its counterpart that it was necessary to ensure that the legislation did not infringe the dignity and human rights of Mexican migrants and, in particular, that it must not call for action that might prompt or result in discriminatory attitudes.

"Under bilateral cooperation on migration, Mexican Government officials have helped to give training courses to those responsible for training United States immigration officials and Border Patrol officers, seeking to acquaint them with the culture and history of Mexico and with the work being done by Mexican consulates in the United States to protect migrants.

"Considering that bilateral migration is the result of structural causes, notably the differences in levels of economic development between Mexico and the United States and the interdependence of the labour markets in the two countries, the Mexican Government has pressed for the adoption of a comprehensive approach to the phenomenon which takes balanced account of the interests and concerns of both nations. To this end, by agreement between the two Governments, governmental and academic experts from both countries have begun to formulate a binational study on migration, the central purpose of which is to provide an objective, comprehensive and long-term analysis of migration to be used in designing and enforcing more effective policies that address the real causes and effects of migration. You will be kept duly informed.

On a different note, Mexican consulates in the United States - particularly those in the border region - have been allocated additional staff, training and funds. Bringing before the United States authorities - and following up on - applications concerning abuse of authority or violations of Mexican nationals' human rights is a matter to which our consulates give priority. With a view to the efficient coordination of our consulates' protective functions, a Directorate for Protection and Consular Affairs was created in 1995 as part of the Office of the Secretary of State for Foreign Relations.

"The Mexican Government recently set up the Beta Sur group, which fulfils the same functions on the southern border as the immigrant protection groups do on the northern border.

"In furtherance of its commitment to safeguard migrants' rights, the Mexican Government distributes an information kit indicating what rights are enjoyed by all migrants within Mexico irrespective of their migrant status. It has also set up a training programme to inform and make migrants aware of public servants' legal obligations to respect migrants' rights.

"Within the Commission on Human Rights and the United Nations General Assembly, the Mexican Government has condemned violations of migrant workers' rights and urged countries to consider the possibility of signing, ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Further to the announcement made by President Ernesto Zedillo, it is intended that on 1 September next, when the Mexican Senate reconvenes in ordinary session, it will be sent for analysis and approval a bill whereby the Mexican Government will ratify the said Convention."

III. ACTION BY GOVERNMENTS

35. The Special Rapporteur welcomes the action taken by certain Governments to eliminate or prevent racism, discrimination and xenophobia.

36. The Standing Advisory Commission on Human Rights informed the Special Rapporteur that a bill, the Draft Race Relations (Northern Ireland) Order 1996, has been submitted to the Parliament of the United Kingdom of Great Britain and Northern Ireland for consideration. The bill would: (a) introduce specific legislation on race relations in Northern Ireland, prohibiting racial discrimination in employment, housing and the supply of goods and services; (b) protect "travellers"; and (c) establish a commission on racial equality for Northern Ireland. Consultations have already been held between the parties concerned (ethnic minorities, non-governmental organizations and the Standing Advisory Commission on Human Rights). 21/

37. The Estonian Government reports that:

"To further strengthen human rights and combat contemporary forms of racism, on April 1996 the Estonian Parliament ratified the Council of Europe Convention on Human Rights and its optional protocols 1, 4, 7, 10 and 11 and granted the right of individual petition to the European Commission on Human Rights". 22/

38. The Government of Cyprus reports that:

"The Law Commissioner is at present considering legislative measures for the regulation and monitoring of broadcast programmes as well as of cinematographic films. Among other international and national legislation, Directive 89/552 of the European Union is being taken into account. In particular, the said Directive includes a provision stating that the Member States should take the necessary measures so that broadcast programmes should not incite acts or activities likely to cause hatred, discrimination or violence against persons by reason of racial, sexual, religious or nationality differences." 23/

39. Morocco informed the Special Rapporteur that:

"Monitoring questions relating to the status of working conditions, reception and protection of the interests of Moroccan migrant workers is a major concern of the Moroccan Government. Efforts by the Moroccan

authorities in this area notably include the maintenance of contacts and dialogue with Governments in host countries with a view to protecting the interests of such workers and improving the status of them and their families.

"Moroccan law prohibits all forms of propaganda for war and severely punishes incitement to national, racial or religious hatred. Likewise, Morocco has ratified the International Convention on the Elimination of All Forms of Racial Discrimination. ... the Human Rights Ministry recently established a xenophobia and racism unit which closely monitors the many violations of basic human rights suffered by Moroccan communities abroad ...". 24/

40. In its communication, the Turkish Government suggests a series of measures to put an end to manifestations of racism:

"In the field of legislation, bodies of domestic laws should be harmonized with a view to effectively deterring and severely punishing those offences committed with racist motivations. Moreover, enhancement clauses must be introduced with respect to such offences.

"To complement the measures to be taken in the legislative area, similar deterrent elements should be put into effect in the administrative domain. In this connection, harsh penalties must be introduced for governmental agents who are involved or acquiesce in racist activities or who condone or do not intervene to prevent such activities. It should be mentioned at this juncture that the training provided to government agents, such as the police and customs officials, who frequently have to deal with foreigners in the accomplishment of their duties, must emphasize racism and other related ills.

"Another area which should be explored in the framework of combating contemporary manifestations of racism is the offering of special assistance for the redress and rehabilitation of victims of racist attacks. The wounds incurred from racism are first and foremost psychological. These wounds may be aggravated by physical injuries in cases of outright physical attacks. In order to create an international mechanism to meet the needs of victims of racism, the question of funding presents itself as a precondition. To this end, the speedy establishment of a United Nations voluntary fund for victims of racism must be ensured.

"As to medium- and long-term measures against racism, the Government of Turkey believes that we must ensure 'prevention', in the sense that new generations must be brought up in a way which renders them fully aware of the threats posed by racism. This would include specific references to the great tragedies and horrors racism has caused in the past; as well as the new menace which it poses in its new and various manifestations and disguises, such as 'cultural relativism'.

"The most effective tool we have to accomplish this endeavour is education. The abhorrence of racism in all its forms and manifestations, with special emphasis on concrete examples from history,

must be included in educational curricula in a manner which takes into account the levels, age and specialization of the students. Similar courses must be incorporated also in professional training, particularly for security and customs personnel." 25/

IV. COMMUNICATIONS RELATING TO ALLEGATIONS OF RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

41. In accordance with established practice, the Special Rapporteur, when receiving allegations of racism, racial discrimination or xenophobia, transmits them to the Governments concerned and expects reply three months later. In the absence of a reply, or if he believes the reply received to be complete, he issues an opinion, then brings the information in his possession to the attention of the Commission.

42. In 1996 the Special Rapporteur transmitted allegations of racism, racial discrimination or xenophobia to 12 Governments in order to obtain information as required by Commission resolution 1996/21, paragraph 13. The Governments concerned were those of Angola, Australia, Austria, Canada, Côte d'Ivoire, France, India, Indonesia, Israel, Italy, the Russian Federation and the United States of America.

A. Angola

1. Communication dated 9 September 1996

43. The press and spoken media have recently been reporting the repatriation, mainly to Mali, of foreigners living in Angola. It is pointed out that the people expelled include foreigners whose presence in Angola was legal and regular.

44. This action is said to have been motivated by xenophobia.

45. No reply has been received from the Angolan Government.

2. Special Rapporteur's observation

46. The Special Rapporteur would like to hope that the Angolan Government will give this matter due attention and supply the information and clarifications requested, rectifying the situation of those people who had been lawfully in Angola but were nevertheless expelled.

B. Australia

1. Communication dated 28 May 1996

47. It has been reported that "Australia's criminal justice system remains heavily weighted against Aboriginal people". Since the start of March 1996 it was found that indigenous Australians still run a disproportionately high risk of arrest, detention and death in custody. A pattern of ill-tratment and arbitrary arrest occurs against a backdrop of systematic discrimination against Aborigines.

48. It has been also alleged that "the way the criminal justice and penal systems function makes Aborigines particularly vulnerable to cruel, inhuman and degrading treatment. The high rate of Aboriginal death in custody is also due to the dramatically disproportionate representation of Aboriginal people in detention".

49. Alleged ill-treatment by police officers has been reported. Police continue to intimidate and harass relatives who do not accept official explanations about deaths in custody and instead have called for further investigations.

50. Furthermore, it has been reported that some prisoners have been kept in leg-irons, handcuffs and chains for up to 24 hours a day and over a period of several days.

51. In one case, an Aboriginal man was assaulted by four police officers and sustained head injuries from the use of batons. More than 26 months after an initial complaint had been lodged, the Director of Public Prosecutions found that there was evidence on which one of the officers should have been charged with assault occasioning bodily harm. However, for technical legal reasons, the officer could no longer be charged.

52. No reply has been received from the Government of Australia.

2. Communication dated 18 December 1996

53. The Special Rapporteur has been informed of the surge in racism, racial discrimination and xenophobia in Australia towards Aborigines, Australians of Asian origin and foreigners, and in particular of the Hanson syndrome or phenomenon. 26/

3. Special Rapporteur's observations

54. The Special Rapporteur hopes that the Government of Australia will respond to his initial communication and provide him with the necessary information on the later one so that he can plan, if appropriate, for a field mission in 1997.

C. Austria

1. Communication dated 26 May 1995

55. It has been reported that "on 5 November 1994, in the city of Bludenz, a predawn arson attack was set on a Turkish-owned building which was to be converted into a mosque after its renovation. The building was heavily damaged, but there were no injuries. It has been alleged that the arson attack had racist motivations."

56. It has been reported that "on 5 February 1995, in the city of Oberwart, a pipe-bomb concealed in a placard reading 'Gypsies go back to India' killed 4 people living in the Gypsy settlement, where a total of 117 people live in 19 box homes. The bomb had been designed to explode at chest-height when anybody touched the placard, whose message had been inscribed in the

ornate lettering of a tombstone. The attack where Gypsies had been living for more than 300 years was depicted by the police as mere accidents or a result of a blood feud."

57. There have been allegations that "this incident has racist motivations and that the neo-Nazi Bavarian Liberation Army was responsible".

58. It has been reported that on 6 February 1995, a bomb, disguised as an aerosol can, wounded a 29-year-old municipal garbage worker of Croat origin in Stinatz, which is mainly populated by Austrians of Coatian descent. The bomb was left near a school. A pamphlet at a bus stop in the town read "Go back to Dalmatia".

2. Reply by the Government of Austria in a note dated 4 April 1996

(a) The case of arson at Bludenz

59. Fires broke out on 22 October, 5 November and 31 December 1994 in an uninhabited house at 25 St. Peterstrasse, 6700 Bludenz (Federal Province of Vorarlberg). Major damage was caused to the building, which was being renovated at the time. It has not been possible to ascertain the causes of the fire on 22 October; none the less, the circumstances suggest that it was arson. On the other hand, it is almost certain that the fires on 5 November and 31 December 1994 were criminal. The three fires caused damage, most of it attributable to the fire on 22 October 1994, worth almost 1 million Austrian schillings.

60. Almost half the damage is covered by insurance. According to Austrian police inquiries, the building had been purchased by an Austrian citizen, apparently on behalf of the "Union of Islamic Cultural Centres of Vorarlberg" (Verband des islamischen Kulturzentren Vorarlbergs), of which he was himself a member. Before the three fires, renovation work had begun with the intention of converting the empty building into flats for members of the Union and an Islamic prayer room. So far the Austrian police's thorough investigations and questioning have yielded no evidence to identify the culprits. Possible motives for the arson are unclear.

61. After the second fire the Austrian police ordered plain-clothes patrols of the district to protect the building. Unfortunately, the precautions failed to prevent the third fire.

(b) The bomb attack at Oberwart

62. At about 7.30 a.m. on 5 February 1995 the partly mutilated bodies of four members of the Romany were found not far from the town of Oberwart (Federal Province of Burgenland). Examination of the scene of the crime and subsequent investigations led to the conclusion that the four were victims of a cowardly bomb attack.

63. Reconstruction of the incident showed that the four men had left the Rom camp in Oberwart at about 10.30 p.m. the day before (4 February 1995), heading for the place where they were to die. At about 11.45 p.m. many of the camp's

inhabitants and the staff at a nearby public hospital heard a blast. It was not reported to the police at the time because people thought it was a New Year firecracker or similar firework.

64. The pipe bomb which killed the four Roma was apparently made to look exactly like a post for a road sign. An iron tube, originally about 1 m 20 long, protruded from the mounting. A metal plate covered in black varnish with the words "Romanies go back to India" in yellow letters, was attached to it.

(c) The bomb attack in Stinatz

65. At about 11 a.m. on 6 February 1995 an employee of the highways department in the village of Stinatz (Federal Province of Burgenland) was emptying dustbins. While doing so, he noticed an apparently empty aerosol can beside the dustbins and decided to throw it away with the other rubbish. When he bent down to pick it up it exploded. The workman's hand was seriously injured (several fingers had to be amputated).

66. On 6 February 1995 a letter was found at a bus stop in Ollersdorf (a village between Oberwart and Stinatz); the contents suggested that it was from one or several people claiming responsibility for the Stinatz explosion.

67. Thorough forensic examination of the booby trap confirmed that it was linked to the Oberwart pipe bomb. Other letters sent at the same time and claiming responsibility for a number of letter-bomb attacks suggest that the Stinatz explosion and the letter-bomb attacks are not unconnected.

3. The Austrian authorities' assessment of the bombings

68. Without a doubt, the Oberwart and Stinatz bombings represent a swingeing attack on democracy and peaceful coexistence with Austria's ethnic groups. They are apparently part of a series which began with letter bombs in December 1993 and has no precedent in Austria's history since the Second World War.

69. The Oberwart incident, in which four people died, is by far the most serious of these attacks. In view of the apparent circumstances of the attacks, there is everything to suggest that the culprit(s) were xenophobically or racially motivated. The Oberwart attack deliberately targeted the Romanies, whose status as a national minority in Austria was officially recognized in 1993.

70. All Austria's political institutions and the public at large were outraged, and they continue to condemn the cowardly attacks at Oberwart and Stinatz.

71. On 8 February 1995 the Austrian Parliament paid tribute at one of its sittings to the memory of the victims of the Oberwart attacks.

72. On 9 February 1995 the Austrian Federal Chancellor visited the Romany camp in Oberwart and the victims' families. The funeral of the four victims, on 11 February 1995, was attended by the Austrian Federal President, the

President of the Austrian National Assembly and numerous Austrian politicians and other leading figures. The whole of Austria expressed its solidarity with the families of the murdered men and the Romany ethnic group itself. Internationally, the Secretary-General of the Austrian Federal Ministry of Foreign Affairs publicly condemned the murders on 16 February 1995 at the fifty-first session of the Commission on Human Rights at Geneva. The first anniversary of the Oberwart attack was commemorated in several ceremonies in Austria with public homage to the memory of the victims. The "congress of Oberwart Ethnic Groups" met from 2-4 February 1996 and discussed the specific concerns of the Romanies.

73. The Austrian police have set up a group of experts in the anti-terrorist service of the Federal Ministry of the Interior, which is chiefly concerned with investigating the bombings in Austria since 1993.

74. The Oberwart and Stinatz incidents have been given priority. Extra staff have been assigned to other units of the Federal Ministry of the Interior which are also taking part in the investigations. In order to shed light on possible links with other countries, the police have intensified their cooperation with their counterparts in neighbouring States.

75. Despite the wealth of information provided by the general public, it is proving difficult to identify the person or persons responsible for the attacks because they were apparently not previously known for their extremist activities. The name of the "Baiuvarian Liberation Army", which is linked to all the letter-bomb attacks, has so far not led to any specific person or group of persons. Nevertheless, the police investigations have led to a series of highly significant discoveries for the pursuit of the investigations.

76. The Federal Ministry of the Interior has offered a S10 million reward (approximately US$ 1 million) for information leading to the arrest of the persons responsible for the Oberwart and Stinatz bombings and the other letter-bomb attacks. The city of Vienna itself has offered a S200,000 reward (approximately US$ 20,000) for any information that helps to identify the perpetrators of the letter-bomb attacks.

4. Special Rapporteur's observations

77. The Special Rapporteur commends the extensive mobilization of the Austrian Government and public opinion against these horrible racially and xenophobically-motivated attacks. He hopes that the Government will continue its investigations until the incidents have been fully elucidated and justice done.

D. Canada

1. Communications dated 12 February 1996

78. According to reports sent to the Special Rapporteur, "Quebec's population has split after the referendum on sovereignty on 30 October 1995"

(no: 50.6 per cent, yes: 49.4 per cent; turnout: 94 per cent). "Several radical movements have since come into being and expressions of racism, xenophobia and intolerance have allegedly multiplied."

79. According to the reports, "the constitutional debate is increasingly marked by emotional outbursts and statements are increasingly polarized. Each of the contending parties accuses its adversary or adversaries of racism or even fascism. More and more movements have emerged, leading to a radicalization of the debate and [conflicting] territorial claims". The situation is described as "disturbing".

2. Reply dated 8 March 1996 from the Permanent Mission of Canada

80. The Permanent Mission of Canada to the United Nations Office and other international organizations at Geneva replied as follows: "Your letter [has been] brought to the attention of the appropriate Canadian authorities, who will closely examine the allegations with a view to informing you of their observations".

3. Special Rapporteur's observations

81. The Special Rapporteur would appreciate the Government of Canada's transmitting its reply in time for the forthcoming session of the Commission in March 1997.

E. Côte d'Ivoire

1. Communication dated 2 February 1996

82. The Special Rapporteur transmitted to the Government of Côte d'Ivoire a tract circulating in Côte d'Ivoire whose xenophobic contents caught his attention; the tract read as follows:

"TO AMBASSADORS FOR THE INFORMATION OF THEIR CITIZENS

Please accept our sincere thanks for your contribution to our country's development. Now please go and develop your own countries which you have deliberately neglected and abandoned to poverty.

Get out of our schools, our markets, our streets, our hospitals, our temples, our churches, our mosques, our university, our countryside, our villages, our fields and above all our port, in a word, get out of our country. We are suffocating and we've had our fill. 'Côte d'Ivoire belongs to the Ivorians' is not a hollow slogan.

You can guess from the Electoral Code what to expect next November after the elections. Act now before the major decisions are taken, don't just wait to experience what's in the offing. Save your women and children now or else it will be like in Algeria, we are prepared to hunt you down everywhere.

Above all don't count on the police or army to hold us back, and even less on the authorities because we all agree: by opening our borders President Houphouet has dropped us in it. Now it's over, Bedie will free Côte d'Ivoire; he himself has said that you can't govern against the people. It's you we're talking to, because what the Ivorian people want is for you to get out. What Bedie wants, like Hitler, is a pure race; an undivided Côte d'Ivoire for pure-bred Ivorians.

Growth is once again within our grasp and we refuse to share it.

Get the so-called international agencies, ADB, ILO, UNICEF, UNIDO, Air Afrique, the World Bank, IMF, WHO, etc. - in other words everything international off our backs. We're going to run national offices and keep to ourselves - a pure race.

It is not our fault if your Presidents are useless.

It is not our fault if your countries are pathetic.

It is not our fault if you are land-locked.

What if there was no Côte d'Ivoire? So get out.

We the undersigned, the soldiers of Bedie. The pure bred Ivorians."

83. No reply has been received from the Government of Côte d'Ivoire.

2. Special Rapporteur's observations

84. The Special Rapporteur sincerely hopes that the Government will examine the problem and provide him with detailed information on the tract, apparently indicative of a wave of xenophobia which troubles neighbouring countries since many of their nationals live in Côte d'Ivoire.

F. United States of America

1. Communication dated 16 April 1996

85. It has been reported that "the State Department has agreed to pay US$ 3.8 million to compensate Black foreign service officers who alleged they were denied advancement and career opportunities because of their race, and to grant retroactive promotions to 17 of them".

86. The agreement was a key part of a negotiated settlement that would end a federal lawsuit that has dragged on since 1986. Black diplomats charged they were given backwater assignments, denied promotions they deserved and unfairly driven out of the diplomatic corps.

87. In addition to the compensation fund and the retroactive promotion, the State Department agreed to reinstate four Black junior officers who were dismissed after failing to win permanent positions and to pay $2.1 million in legal fees to lawyers who represented the Black diplomats.

88. It was further stated that, despite years of affirmative action programmes, "the State Department remains a very white institution. As of mid-1993, papers filed with the case show 87.6 per cent were White and 6.7 per cent Black. Only 1.4 per cent of the diplomats in the senior foreign service were Black".

89. The Special Rapporteur has received no reply from the Government of the United States of America.

2. Communication dated 28 May 1996

90. The Special Rapporteur transmitted allegations of poor police conduct in coloured communities. A national tribunal, meeting in Chicago on 26 October 1995 to give a hearing to victims of police misconduct, made a statement from which the following extracts are taken.

> "After reviewing the testimony and documentation we are convinced that the evidence supports a conclusion that police violence and corruption on the local, state and federal levels, particularly within communities of colour and poor communities, are at the foundation of a gross and consistent pattern of human rights violations in the United States.
>
> "As judges with expertise in human rights violations, we are familiar with documented reports of police violence and corruption dating back at least to the creation of the United States. The evidence that we have reviewed suggests that the police violence chronicled throughout history has not abated. Indeed, in the words of one witness, 'it is unremitting'.
>
> "Our concern is heightened by the testimony of some of the witnesses perpetuating the view that police misconduct should be punished because the victim was 'innocent', that is, not engaged in any criminal conduct. Yet the police abuses reported far exceeded any actions that could be justified based on criminal conduct of any of the victims. The documentation of criminalization of youth of colour, particularly Black and Latino, reviewed prior to the Tribunal and during it, support the conclusion that police are often able to avoid discipline and punishment because their victims are young, poor and of colour.
>
> "In addition to the criminalization of youth of colour and the poor, the testimony raised a number of significant issues, including the following:
>
> 1. Police across the United States have engaged in beatings, harassment, physical torture and murder of individuals.
>
> 2. Police across the United States have been involved in frame-ups, calculated efforts to discredit witnesses and complaints, and the destruction of key evidence.

3. Under the guise of the 'war on drugs' and the 'war on gangs', loved ones, family members, neighbours and community residents were made to endure racist slurs and taunts, improperly served warrants, illegal 'warning' shots and unnecessary invasions of their privacy.

4. Testimony supported the conclusion that police continue to be viewed as an 'army of occupation' in many communities of colour.

5. Evidence indicates that when victims or witnesses attempted to press their claims, police officials denied them access to information that would support their claims, creating a 'wall of silence'.

6. Active-duty police officers, both men and women, also testified that when they challenged police misconduct, they were met with the 'code of silence', which includes the practice of shunning and other forms of harassment.

7. Some of the other forms of harassment described by these police witnesses included attempts to undermine their morale, effectiveness and credibility, including sending them dead animal parts and shouting degrading obscenities at them in public.

8. Testimony by police officers indicated that gender is an added dimension of vulnerability to police abuse.

9. The evidence suggests that people with some mental history may be particularly vulnerable to police abuse.

10. Evidence suggests that police use restraining devices in inappropriate ways, subjecting people to torture. Witnesses testified to excessive use of pepper spray after the victim posed no threat to police officers. Persons were shackled by their legs and forced to walk, in a method known as 'hobbling'. We heard about the use of 'hog-tying', in which arms and feet are bound together behind one's back. Witnesses provide evidence of persons shackled in cells so that they hung from their hands.

11. Most witnesses testified that they attempted to develop systemic responses to police violence, such as community police review boards, and were met by concerted opposition from police officials and police unions. This included responses such as open hostility, attempts to discredit, lies, threats, other forms of intimidation and sophisticated forms of political lobbying."

91. No reply to these allegations has been received.

3. Special Rapporteur's observations

92. In order to follow up the allegations, and encouraged by the spirit of dialogue in his relations with the United States, the Special Rapporteur hopes that the Government of the United States will provide him with information on the above allegations in time for the next session of the Commission in March 1997.

G. Russian Federation

1. Communication dated 3 May 1996

93. The Special Rapporteur transmitted to the Russian authorities a report on discrimination against the Meskhetian Turks in Krasnodar Territory. The report alleges that:

> "The Turks-Meskhetians who live in Krasnodar Territory deserve special attention for several reasons. Firstly, the Turks who had to leave Uzbekistan in 1989-1990 have settled in many areas in the south of Russia, but only in Krasnodar Territory have the overwhelming majority of them found themselves deprived of permission for permanent residence, which implies the opportunity to exercise in full citizenship, political and social rights. The Meskhetians in Krasnodar comprise the significant part of the forced migrants who arrived in the territory of Russia from other Union Republics before the breakdown of the Soviet Union and who in defiance of the current legislation and international obligations of the Russian Federation have up till now not been given any legal status. Secondly, the Meskhetians were a 'repressed' people during the years of Soviet power and are trying to solve the difficult and painful problem of returning to the place where they were expelled from. Thirdly, an interesting aspect is Krasnodar Territory itself, whose authorities are conducting a severe policy aimed at moderating by various means the immigration inflow from outside."

94. No reply has been received from the Russian authorities.

2. Special Rapporteur's observations

95. The Special Rapporteur would appreciate the Government of the Russian Federation providing him with information on the above allegations in time for the forthcoming session of the Commission, in March 1997.

H. France

1. Communication dated 15 September 1995

96. It has been reported that on 29 October 1994, after setting upon four Turks, four French youths, accompanied by 15 other neo-Nazis, attacked a restaurant belonging to Mr. Mehmet Bashoroz, a Turkish resident of Obernai (Alsace). Considerable damage was caused to the restaurant and a Turkish customer was reportedly wounded.

97. Four of the 15 youths who are known to be members of the "Alsace Corps" are said to have been arrested by the police, which seized right-wing extremist propaganda at their homes. The four young extremists reportedly admitted taking part in the incident.

98. The incidents were presumably motivated by racism.

2. Reply from the French Government, by letter dated 13 March 1996

99. On Saturday, 19 October 1994 a number of skinheads, some of whom belong to the "Alsace Corps", gathered at the "le Tigre" bar in Sélestat, intending to go to Klingenthal village hall where a birthday party was being organized for pupils of the Feppel secondary school in Obernai. One member of the group, Olivier Fauchart, had in fact been asked by the party organizer to help keep order.

100. Before going to Klingenthal the skinheads first went to Obernai, where they were seen in two bars: the "Athic" and the "Byblos". An hour after their arrival, they split into two groups: the first composed of Philippe Léger, Brun Adler, Raphaël Kaelbel, and Jean-Michel and Nicolas Broggi; the second comprising members of the "Alsace Corps": Olivier Fauchart, Olivier Fassel, Jean Delarossa, Bertrand Neth and Mathieu Hart (a minor, against whom charges have been dropped).

101. The first group did not find the party to its taste and moved on to Colmar, while an argument broke out between the second group and some foreigners, including Mouai Megtait, Salah Eddine, Sinan Durdu, Amedh Mebrouk and Oscar Tan. No one was reported hurt, but a vehicle belonging to Taha Mebrouk was partly destroyed.

102. The group then returned to Obernai. One of them provoked Ali Polat, who had just had dinner in a Turkish restaurant belonging to Mehmet Baschoroz. Mr. Polat was chased by the group and took refuge in the restaurant where damage was caused: the windows were broken, the premises were bombarded with empty bottles and the customers sprayed with tear gas. Ali Polat was hurt, and was off work for five days.

103. Searches of the homes of the four members of the "Alsace Corps" turned up:

(a) Neo-Nazi, racist, extreme right-wing propaganda and correspondence demonstrating the paramilitary and Nazi nature of the structure of this group of skinheads;

(b) Pick axe handles, knuckledusters, etc.; and

(c) Group photographs portraying neo-Nazi emblems and poses.

104. The examinations of the witnesses identified Olivier Fauchart as the instigator of the racist operation in Klingenthal which had been planned several days earlier at a meeting at Meinau football ground. Fauchart did not take part directly, unlike Jean Delarossa, Olivier Fassel and Bertrand Neth, who were actively involved.

105. The main culprits in the attack on Ali Polat and the owner of the restaurant were Olivier Fauchart, Olivier Fassel and Bertrand Neth.

106. The investigation found sufficient evidence to institute proceedings for:

(a) Premeditated wilful armed assault, causing a temporary cessation of work of less than eight days (an offence covered by art. 222-13, para. 12, of the Penal Code) against Olivier Fauchart, Olivier Fassel, Bertrand Neth and Jean Delarossa; and

(b) Destruction, damage and injury to several persons (an offence covered and penalized by arts. 322-1 and 322-3, para. 1, of the Penal Code), against the same persons.

107. In a decision handed down on 1 December 1994, the Saverne Court of Major Jurisdiction handed down the following sentences:

(a) A one-year prison sentence, eight months of which were suspended, and two years' probation together with three years' deprivation of civil, civic and family rights, against Olivier Fauchart;

(b) A one year prison sentence, eight months of which were suspended, two years' probation and two years' deprivation of civil, civic and family rights, against Bertrand Neth;

(c) A one-year prison sentence, six months of which were suspended, three years' probation and two years' deprivation of civil and family rights, against Jean Delarossa; and

(d) A one-year prison sentence, 10 months of which were suspended, and two years' probation, against Olivier Fassel.

3. Communication dated 23 September 1996

108. The Special Rapporteur transmitted to the French authorities for comment a report describing "the main violations of human rights and legal irregularities committed by the French Government in the case of the 'sans-papiers' (persons without identity papers) in the Saint-Bernard church in Paris". The incident took place on 23 August 1996.

109. The report described the facts in the following terms: "the violence employed, the brutal desecration of a place of worship, the gross misconduct and in particular the racial discrimination were seen as intolerable acts profoundly alien to France's democratic traditions, image and history ..."; it discusses the causes:

> "The accentuation of inequalities throughout the world, the rise in unemployment in France and in Europe, the pursuit of market-oriented policies that do not admit of entrenched social interests, efforts to bring down wage costs by any means, and the damage inflicted by unbridled worldwide competition have led, on the one hand, to the singling out of the entire immigrant population as scapegoats and, on

the other, to the development of an underground economy, frequently for the benefit of well-known firms which exploit it with complete impunity, and moonlighting, mostly by French citizens even though the finger is pointed at immigrants.

"This acounts for the system of repatriation grants instituted in 1982, which set the tone and was followed, in 1986, by the Act of 9 September on immigration and residence controls over aliens in France and the introduction (by the Minister of the Interior, Charles Pasqua) of large-scale identity checks, thus labelling the entire immigrant population as a potential source of all evils, from unemployment to petty crime or even terrorism. This fuelled a particularly disturbing line of racist and xenophobic thinking.

"Then came a series of acts and special provisions targeted at immigrants.

"In 1992: the introduction of holding areas in ports and airports; the establishment of a national dossier of aliens in France; in 1993: a series of acts intended to control immigration, amending the conditions applicable to the right of asylum, family reunion and mixed marriages; the '<u>vigie pirate</u>' plan, i.e. measures introduced to combat terrorist attacks; the five-yearly reform of the judicial system in 1994 and the Security (orientation and programming) Act together with the 1995 reforms to the structure and tasks of the police which made efforts to combat illegal immigration a priority."

110. The report concludes that:

"It is to these measures as a whole and to their consequences that attention should be drawn today, because they lead to acts that undermine respect for human rights ...

"Holding areas do not allow people to exercise the remedies to which everyone is entitled, nor do they allow the courts, lawyers and even representatives of UNHCR to operate normally.

"The holding centres are places where people are deprived of their liberty and human dignity is not respected. In the case of the 'sans-papiers' it transpired that children were being held, that the rights of the defence were not being respected and that administrative irregularities were becoming increasingly numerous.

"The so-called Pasqua Acts have put the foreign parents of children who are or will in all likelihood become French, couples of mixed descent and their children and people denied asylum in an inextricable situation, flatly at odds with a number of international rights which France none the less acknowledges.

"The way in which persons at risk in their countries of origin or under judicial supervision, declared not liable to expulsion or under court protection, are expelled goes to show how seriously human rights are being violated in France.

"It is also worth mentioning the hunger strikers interned in a military hospital and denied visits by civilian doctors, and the use of military bases for police operations.

"Numerous administrative circulars in the public and semi-public services and authorities lay down discriminatory treatment for the immigrant population, among them ANPE (the National Employment Agency), ASSEDIC (Family Allowance funds) and the Social Security Offices, which are required to carry out special checks and to demand supporting documents and even systematically to inform on immigrants to a specialized department in the prefectures.

"Against this background an extreme right-wing politician has no hesitation in openly declaring himself a racist, confident that he will gain a political and electoral advantage."

111. This document contained an annex entitled "Statement concerning the remarks by the Chairman of the National Front on 'racial irequality'" and a "note relating to the authorization granted to the so-called 'sans papiers' (aliens without identity documents) to reside in France", adopted on 12 September 1996 by the plenary assembly of the National Consultative Commission on Human Rights.

112. No observation has been received from the Government of France concerning this case.

4. Special Rapporteur's observations

113. Regarding the communication dated 15 September 1996, the Special Rapporteur takes note of the reply from the Government of France. The Government is a firm believer in the rule of law and abides by the decision of the Saverne Court of Major Jurisdiction, while expressing the hope that the police will remain vigilant over skinheads' activities.

114. Following the case of the "sans papiers" in the Saint-Bernard church, on 13 November 1996 a delegation from the Confédération générale du travail (one of the major trade unions) accompanied by trade unionists from Mali and Senegal met Mr. Gilberto v. Saboia, the Ambassador of Brazil and Chairman of the Commission on Human Rights, who sent a summary of the meeting to the High Commissioner for Human Rights and to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

115. The Special Rapporteur addressed this important issue in his report to the fifty-first session of the General Assembly (A/51/301, para. 52) and in his introductory statement to the report, on 5 November 1996 at the third meeting.

116. He hopes to receive a reply from the French authorities which he can bring to the Commission's attention at its fifty-fourth session, in March 1998.

I. Indonesia

1. Communication dated 4 June 1996

117. The Special Rapporteur received and transmitted a report concerning the situation of the indigenous people of Irian Jaya. In this report it is alleged, inter alia, that:

"Widespread abuses appear to be ongoing within the context of an oppressive military presence, continuing environmental damage and the cultural subordination of indigenous people in the face of the massive exploitation of resources by powerful multinational corporations.

"Irian Jaya was a Dutch colony ceded to Indonesia in 1969 by the United Nations after an 'Act of Free Choice' (known to the locals as an 'Act of No Choice' because the tribespeople had no opportunity to say whether they wished for independence; most of the people spoke neither Dutch nor Indonesian and many of the tribes had no prior contact with outsiders).

"The tragedy is that with the Indonesian takeover a classic colonial situation is occurring: the local people are marginalized. Transmigrants, mainly from Java, are being given the local people's land. All aspects of the locals' lives have been altered and they are forcibly resettled.

"The politics, culture, economy, education and work opportunities are Indonesian, imposed from Jakarta. Very few opportunities are available for the West Papuans.

"The Freeport Mines Company control the whole economy of Irian Jaya. All produce grown and manufactured is for the Company. Freeport also supplies over half the revenue tax for Jakarta. For these reasons the Government of Indonesia uses the military to protect Freeport's interests. Any locals who show signs of dissatisfaction are harassed, tortured, disappeared or murdered. The relationship between the Freeport Company and the Indonesian military is so close that it is not possible that the Company is unaware of the military's activities."

2. Reply from the Government of Indonesia by letter dated 20 October 1996

118. The following is taken from the communication from the Indonesian authorities:

"The allegations of Ms. Jean McLean and the Australian Section of the International Commission of Jurists consist of nothing but half truths, uncorroborated facts and unwarranted recommendations. In fact, they have engaged in a very dangerous venture, namely, supporting an armed and violent separatist group, i.e. the Free Papua Movment (OPM). Jean McLean has deliberatly concealed the activities of the OPM by stating that 'The OPM group led by Amungme Chief Kelly Kwalik has undertaken a series of non-violent flag raising'. What Jean McLean

terms as 'non-violent flag raising' by Kelly Kwalik is actually a five-month long stand-off in which the OPM took 23 people hostage, including a five-month pregnant United Nations official, and brutally murdered two of them.

"The Secretary-General of the United Nations, the High Commissioner for Human Rights and the ICRC urged that the hostages be released to no avail. The appeal by the Federation of Associations of Former International Civil Servants to release the United Nations officials went unheeded. This is, unfortunately, not an isolated incident. Many people have been killed, tortured or threatened by the OPM. There were a number of cases in which whole villages were forced to cross the Indonesian border at gunpoint in an attempt to create the image that the villagers in Irian Jaya were fleeing to the neighbouring country.

"OPM is a separatist group which was created in 1961 by the former members of the New-Guinea Raad (New Guinea Council), a body establish by the Dutch colonial power to support Dutch colonization in Irian Jaya. In 1965, OPM attempted to sabotage efforts by the United Nations Secretary-General's representative in West Irian, Mr. Ortiz Sanz to bring about the process of self-determination by launching armed attacks in the villages of Manokwari, Wghete and Enarotali in Paniai Regency. Mr. Ortiz Sanz went to the Regency and appealed 'to the population to act within the framework of law and order so that the basic conditions for the act of free choice might be preserved.' (para. 156; annex I, doc. A/7723).

"These facts have been effectively concealed by Jean McLean and the International Commission of Jurists. It is therefore rather easy for Indonesia to understand why the Australian Section of the International Commission of Jurists invited the OPM, a violent group of people who have sytematically used terror and other human rights violations in its method of work, to provide the so-called 'recommendations' in its report. The Australian Section of the International Commission of Jurists has indeed done a great disservice to its reputation.

"This has led the Government of Indonesia to wonder what is the real motivation of Jean McLean and Australian Section of the International Commission of Jurists. The suggestion that there strong racist feelings on the part of one ethnic group against another, specifically the Irianese, in Indonesia, and that due to these racist attitudes the people in Irian Jaya are tortured, arbitrarily detained and extrajudicially executed, is indeed sickening and totally unacceptable.

"As you are aware, Indonesia is one of the most diverse nations in the world, with a population of 190 million consisting of 350 ethnic groups speaking 583 languages and embracing five religions. It is clear that Indonesia, if it wants to maintain its unity and harmony, is the last country in the world to harbour racist attitudes. Indonesia cannot afford to be a racist society or allow racism, which in some countries is permitted on the pretext of freedom of expression, to prevail. It would be extremely foolish to condone the practice of racism or

religious intolerance in a society like Indonesia, for the logical consequences of such attitude or policy would be a fatal fratricidal conflict among 190 million people, a tragedy which would probably be much more horrible than the one that took place in Rwanda, a nation with a population of 9 million.

"Objective foreign observers have commented positively on Indonesia's diversity. For example, Professor Lawrence Sullivan, Director of the Study of World Religions at Harvard University, stated that 'Indonesia has created a situation in which people from diverse religious and cultural backgrounds can live in harmony. This is something that cannot be found in countries in Europe or North America'.

"No less than the International Commission of Jurists has stated in one of its books (Rights of the Child, 1993) that 'despite a wide variety of ethnic, racial, religious and other socio-cultural groups throughout the archipelago, Indonesians live in a non-discriminative environment. Successful efforts have been made by the Government to realize equality among them in nation building'. The Australian Section of the International Commission of Jurists has done great disservice to the reputation of the International Commission of Jurists.

"It is not only necessary that Indonesia build a strong national identity based on tolerance among the various ethnic groups, races and religions living in the country, but it is also a fact that tolerance is one of the fundamental principles that gave birth to Indonesia itself. These principles are also part of the mandate contained in the 1945 Constitution. The Preamble to the Constitution states, among other things, that 'the State of Indonesia ... shall protect all the people of Indonesia and their native land'. It also states that 'the national independence of Indonesia shall be formulated into a constitution of the sovereign Republic of Indonesia which is based on the belief in the One and Only God, just and civilized humanity, the unity of Indonesia, democracy guided by the inner wisdom of deliberations amongst representatives and the realization of social justice for all the people of Indonesia'.

"In this connection, it is also worth mentioning some of the articles of the Constitution bearing on the issue of tolerance. Article 18 of the Constitution stipulates that the social structure of all regions shall be respected by the Government and its regulations. Article 32 elucidates the State's recognition of all cultural life in all regions as part of the national culture. Article 36 states that the languages of all ethnic groups in Indonesia are to be preserved and recognized as part of the Indonesian culture.

"It is the common responsability of both government and society in Indonesia to respect diversity and cultivate tolerance. Providing youths with education on tolerance among ethnic, religious and cultural groups at all levels of schooling is among the Government's chief successes in promoting tolerance. The principle of just and civilized humanity is understood by children in elementary school, junior and senior high school and university as a principle, among others, in

recognizing that all human beings are equal; to care for each other; to develop tolerance; to uphold humanity. Moreover, the principle of the unity of Indonesia is recognized, among others, as a principle in advancing the efforts of each and every Indonesian to promote diversity and unity.

"In a country of such diverse ethnic, racial and religious composition, and which has as its motto 'Bhineka Tunggal Ika' or 'Unity in Diversity', racism or xenophobia is simply untenable. As a matter of fact, I [the Permanent Representative of Indonesia] sometimes wonder whether others should learn about tolerance in our country, so that Indonesians, fellows Asians, Africans, Latinos or others who come from developing countries will not experience the racist attitudes of some segments of society in some developed nations that claim to be the champions of human rights, including that nation in which the source of the allegations originated.

"During the deliberations on agenda item 108, entitled 'Racism and racial discrimination' at the fifty-first session of the United Nations General Assembly, the Indonesian delegation again supported the work of the Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia. Indonesia also made it clear that lack of adequate resources had in fact prevented the implementation of the 1994-1995 biennial Programme of Action for the Third Decade to Combat Racism and Racial Discrimination. Indonesia also expressed its deepest concern at the fact that the focal point established for the Programme of Action has been dismantled. Here in Geneva, the situation is also threatening whereby the proposed new structure of the Centre for Human Rights based on the proposition of a large American consultancy firm supported by Western powers, if implemented, will effectively remove the focal point on racism in the Centre for Human Rights.

"It is our belief that we should work together to eradicate racism, as well as all attempts aimed at frustrating the endeavours of the international community to eradicate racism."

3. Special Rapporteur's observations

119. The report from Jean McLean and the International Commission of Jurists and the clarifications from the Government of Indonesia on specific allegations of human rights violations are available for consultation in the Secretariat.

J. Israel

1. Communication dated 2 February 1996

120. According to information received by the Special Rapporteur, it has been the Government's secret policy for years to discard the blood donations of Ethiopian Jews for fear of AIDS.

121. Government officials confirmed this information after the newspaper Ma'ariv published a photograph of a bag of blood with this handwritten notation on its tag: "do not use because he is from Ethiopia".

122. It has been alleged that Mr. Zvi Ben Yishai, the Deputy Director of Haifa's Ramban Hospital and Chairman of the Government-run National Aids Committee, defended the policy in an interview as "justified for the protection of the public" because, he said, Ethiopian immigrants have as much as 50 times the incidence of AIDS as other Israelis. But Mr. Yoram Lass, a member of Israel's Parliament and former Director General of the Health Ministry, described the screening policy as "racist and unfounded scientifically".

123. It has also been reported that needlessly large numbers of Ethiopian children in elementary school are placed in classes for the learning-disabled and that teenage Ethiopians are largely schooled in vocational tracks that prepare them for society's least rewarding jobs.

124. A majority of Ethiopians are housed in grim trailer parks in distant "development towns", and their religious leaders are not recognized by the government-sponsored rabbinate.

2. Reply from the Government of Israel by a letter dated 26 February 1996

125. The Government of Israel has provided a detailed account of the situation of the Falasha in Israel. Part of the information was published in the Special Rapporteur's report to the General Assembly at its fifty-first session (A/51/301, paras. 34 and 35).

3. Special Rapporteur's observations

126. The Special Rapporteur is still awaiting the conclusions of the Commission established to consider the question of blood donations by the Ethiopians, as promised by the Government of Israel in its communication.

K. India

Communication dated 20 December 1996

127. The attention of the Special Rapporteur has been drawn to the situation of the untouchables in India. 27/ In view of the complexity of the issue, he plans to carry out preliminary studies in consultation with the Government of India, the parties concerned and in conjunction with the Committee for the Elimination of Racial Discrimination, before undertaking a field mission if appropriate. He has informed the Indian authorities of his intention.

L. Italy

1. Communication dated 23 December 1996

128. According to information received, "a high proportion of ill-treatment by law enforcement officers continued to concern people of non-European ethnic origin". In this context, two cases were brought to the attention of the

Special Rapporteur. One is that of a Ghanaian citizen who was beaten by police officers at Leonado Da Vinci International Airport at Fiumicino while in transit between Denmark and Ghana; another is the case of a woman, an Italian citizen of Nigerian origin, who alleged that police officers had physically assaulted her and that there was a "xenophobic" aspect to their behaviour. She claimed that when she stated that she was an Italian citizen she was told that a "black woman cannot be an Italian citizen".

2. Special Rapporteur's observations

129. As in similar cases which he has brought to the attention of the Government of Italy (see A/51/301, para. 8), the Special Rapporteur hopes that the Italian authorities will once again cooperate in helping to clarify these matters so that he may inform the Commission at its next session, in March 1997.

V. CONCLUSIONS AND RECOMMENDATIONS

130. Once again, the Special Rapporteur finds that racism and racial discrimination persist in various regions of the world both in their structural, economic and social form and in the form of xenophobia. Theories of racial inequality are raising their head while at the same time modern communication technologies, especially the Internet, are being perniciously employed to foment racial hatred, xenophobia and anti-Semitism.

131. In earlier reports the Special Rapporteur made a number of recommendations which have been approved by the General Assembly and the Commission. He would like to see them translated into action, in particular in the fields of education in human rights, acceptance of others, and tolerance for the sake of peace.

132. He nevertheless wishes to reiterate his recommendation (a) to convene a world conference on racism, racial discrimination and xenophobia, with the question of immigration and xenophobia appearing on the agenda; and (b) to consider action at the international level - beginning studies, research and joint action immediately - over the use of the Internet as a vehicle for racist propaganda.

133. Lastly, the Special Rapporteur would appreciate it if, as the General Assembly recommended yet again in its resolution 51/79, the resources he requires to discharge his mandate were made available.

Notes

1/ The Governments of the following States have replied: Germany, Cyprus, Cuba, Estonia, Israel, Morocco, Mexico, Turkey, Ukraine, and Kuwait; the following non-governmental organizations have provided information to the Special Rapporteur: Amnesty International, American-Arab Anti-Discrimination Committee, Consultative Council of Jewish Organizations, International Federation of Human Rights, Human Rights Watch, International Commission of Jurists and International Helsinki Federation for Human Rights.

2/ See E/CN.4/1994/66, paras. 32 to 45; A/49/677, paras. 18 to 50.

3/ See, A/49/677 and A/50/476.

4/ See report of the United Nations Seminar to assess the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (E/CN.4/1997/68/Add.1).

5/ A/51/301, para. 21.

6/ See also A/50/476, paras. 155 to 157.

7/ Newsweek, 25 November 1996, pp. 48 to 50.

8/ Amnesty International, United States of America. Police brutality and excessive force in the New York City Police Department, June 1996 (AI INDEX: AMR 51/36/96).

9/ Amnesty International, USA: The Death Penalty in Georgia: Racist, Arbitrary and Unfair, June 1996, (AI INDEX: AMR 51/25/96).

10/ Anti-Defamation League, The Web of Hate. Extremists Exploit the Internet, New York, 1996; Simon Wiesenthal Center, Hate Mayhem and Terrorism on the Internet. A Special Report prepared for the United Nations Centre for Human Rights, September 1996.

11/ Note dated 31 July 1996 from the Permanent Mission of Turkey to the United Nations Office at Geneva.

12/ Centre for Equal Opportunities and Opposition to Racism, Rapport annuel, Brussels, 1995, p. 7.

13/ Anti-Defamation League, The Web of Hate, op. cit., p. 40.

14/ American-Arab Antidiscrimination Committee, 1995 Special Report on Anti-Arab Racism. Hate Crimes. Discrimination and Defamation of Arab Americans, Washington D.C., 1996.

15/ Op. cit., p. 11.

16/ Communication from the American-Arab Anti-Discrimination Committee dated 10 July 1996.

17/ Communication dated 12 September 1996 from the Permanent Mission of Israel to the United Nations Office and other International Organizations at Geneva, containing a study by the University of Tel Aviv into anti-Semitism throughout the world in 1995. For further information, see also Tel Aviv University, The Anti-Defamation League, The World Jewish Congress, Anti-Semitism Worldwide 1995/96, Tel Aviv, 1996; Institute for Jewish Policy Research and American Jewish Committee, Anti-Semitism. World Report 1996, New York, 1996.

18/ Human Rights Watch, Children of Bulgaria. Police Violence and Arbitrary Confinement, New York, Washington, September 1996, pp. 32 and 33.

19/ Amnesty International, Concerns in Europe, January-June 1996, p. 35.

20/ Press release dated 8 June 1996 by Human Rights Watch, on the occasion of the publication of the report Roma in the Czech Republic: Foreigners in Their Own Land, New York, Washington, 1996.

21/ Communication, dated 1 October 1996, from the Standing Advisory Commission on Human Rights.

22/ Communication dated 8 July 1996 from the Ministry of Foreign Affairs of the Republic of Estonia.

23/ Communication dated 23 July 1996 from the Permanent Mission of Cyprus to the United Nations Office at Geneva and Specialized Agencies in Switzerland.

24/ Communication dated 8 August 1996 from the Permanent Mission of the Kingdom of Morocco to the United Nations Office at Geneva and International Organizations in Switzerland.

25/ See note 11 above.

26/ Communication dated 15 October 1996 from Michael Dodson, Commissioner for Social Justice for the Aborigines and the Torres Strait Islanders; communication dated 20 November 1996 from Mr. Geoffrey Atkinson, National Solicitor, National Aboriginal and Islander Legal Services Secretariat. See too, "L'Australie est secouée par une vague de xénophobie anti asiatique", (Australia swept by a wave of anti-Asian xenophobia), Le Monde, 18 December 1996, p. 4.

27/ Communications dated 14 and 29 June and 9 August 1996 from the Ambedkar Centre for Justice and Peace; communication dated 31 October 1996 from the World Council of Churches; communication dated 1 November 1996 from the Dalit Liberation Education Trust.

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IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

Report by Mr. Maurice Glélé-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, submitted pursuant to Commission on Human Rights resolution 1996/21

Corrigendum

This corrigendum is issued in implementation of Commission on Human Rights decision 1997/125, dated 18 April 1997, entitled "Racism, racial discrimination, xenophobia and related intolerance".

Delete the final sentence of section 3 of paragraph 27 of the report (E/CN.4/1997/71), which reads as follows:

> "The use of Christian and secular European anti-Semitism motifs in Muslim publications is on the rise, yet at the same time Muslim extremists are turning increasingly to their own religious sources, first and foremost the Qur'an, as a primary anti-Jewish source."

The rest of the section remains unchanged.

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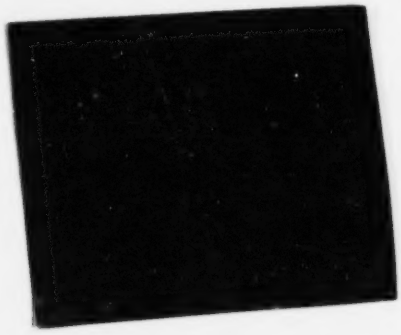

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IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

Report by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Addendum

Mission to Colombia

CONTENTS

	Paragraphs	Page
INTRODUCTION	1 - 9	3
A. Purposes of the mission	1	3
B. Conduct of the mission and working methods	2 - 6	3
C. General	7 - 9	4
I. A COUNTRY MOVING TOWARDS RACIAL AND ETHNIC INTEGRATION	10 - 33	5
A. Ethno-demographic data	10 - 11	5
B. Constitutional and legislative guarantees	12 - 20	5

CONTENTS (continued)

		Paragraphs	Page
C.	Progress achieved	21 - 33	8
	1. Efforts in support of Afro-Colombian communities	24 - 30	8
	2. Measures in support of indigenous populations	31 - 33	9
II.	SERIOUS OBSTACLES TO BE OVERCOME	34 - 65	10
A.	The weight of the past and economic and social disparities	35 - 50	10
B.	Contradictions in legislation and regulations and the difficulties of dialogue	51 - 52	14
C.	Exploitation of natural resources, development projects, and threats to the existence of the Afro-Colombian and indigenous communities	53 - 57	14
D.	Administrative obstacles and inertia	58 - 61	15
E.	Ubiquitous violence	62 - 65	16
III.	CONCLUSIONS AND RECOMMENDATIONS	66 - 68	17

Annexes

I.	Programme of the visit	20
II.	Administrative departments of Colombia	25
III.	Indigenous groups in Colombia	26
IV.	Colombia's indigenous peoples: approximate locations	27

Introduction

A. Purposes of the mission

1. In accordance with his mandate as renewed by Commission on Human Rights resolution 1996/21 and approved by Economic and Social Council decision 1996/259, the Special Rapporteur visited Colombia from 28 June to 15 July 1996, by agreement with the Colombian Government. The purpose of the visit was to study, together with the Colombian authorities, the obstacles preventing the full implementation of measures to combat racism and racial discrimination. It also addressed the concerns of Colombian non-governmental organizations which had transmitted information to the Special Rapporteur concerning the persistence of racism and racial discrimination in various forms. 1/

B. Conduct of the mission and working methods

2. The Special Rapporteur focused his attention primarily on the Afro-Colombian and Amerindian communities who, according to their own statements, are the communities most exposed to racism and racial discrimination. The Arabs or Turcos ("Turks") 2/ most of whom are of Lebanese origin, and the Jews are well integrated and have no problems of racism or racial discrimination.

3. The departments of Chocó and Nariño, which the Special Rapporteur visited, are among the poorest in the country and attest to the marginalized status of the Afro-Colombians and Amerindians. There is an astonishing lack of basic infrastructure in these departments and living conditions are precarious, unlike in the Andean region where most investment has been concentrated. In fact, it was not without danger that the Special Rapporteur reached the city of Buenaventura, department of Valle, after an epic journey over a narrow road (the only means of access) which wound through hills and valleys, highlighting the dilapidated state of part of this department.

4. The Special Rapporteur regrets not having been able to visit a resguardo 3/ in order to familiarize himself with the living conditions of indigenous populations in rural areas, despite several applications to the Colombian authorities. A final attempt was made in Quibdo but was unsuccessful owing to the activities of guerrilla movements in the region. He nevertheless believes, on the basis of the testimony of the representatives of Amerindian organizations who met with him, that he acquired a sound understanding of the problems confronting the members of the indigenous communities.

5. The Special Rapporteur was accompanied by an official of the Centre for Human Rights and two interpreters from the United Nations Conference Services Division. The detailed programme of the visit, with the names of the people, institutions and organizations he met, appears in annex I of this report.

6. The Special Rapporteur wishes to express his gratitude to the Colombian Government for the welcome it extended to him and for providing him with working conditions that enabled him to successfully conduct his mission by meeting high-level officials (ministers, heads of departments, ombudsmen,

personeros (municipal councillors), representatives of the Office of the Attorney-General and the Public Prosecutor's Office, members of Congress such as Mrs. Zulia Maria Mena Garcia, Senator Lorenzo Muela, the head of the Office of Indigenous Affairs and the head of the Office of Afro-Colombian Affairs (Ministry of the Interior), and representatives of indigenous and Afro-Colombian communities in the different regions of the country, in Bogotá, Buenaventura, Cali, Cartagena, Quibdo and Tumaco. He would also like to express his gratitude to the municipalities that received him, in particular those of Cali, Buenaventura and Quibdo, and to the different communities that he met, particularly those of African origin, with whom he shared cultural evenings: African history, anthropology and dances. They expressed their attachment to their ancestral roots and their keen desire to establish intercultural relations with Mother Africa. The Special Rapporteur promised to speak on their behalf to UNESCO, which has produced important learned publications on African culture and their relations with the African diaspora, and on indigenous and Caribbean cultures. Those meetings were most interesting and rewarding.

C. General

7. The Special Rapporteur finds that, since colonization, Colombia has been experiencing persistent structurally and economically entrenched racial discrimination in the form of domination by Whites over Amerindians and Afro-Colombians. This system has been perpetrated through education, the media, the economy and interpersonal relationships, although great hopes were raised by the historic institutional turning-point for the country represented by the adoption of the 1991 Constitution and transitional article 55, which became Act. No. 70 of 27 August 1993. The Special Rapporteur has noted that: (a) the indigenous and Black populations have been and are marginalized, they are the poorest and most vulnerable groups, and they live in unfavourable economic and social conditions, in appalling shanty towns such as Aguablanca in Cali and the intolerably unhygienic Quibdo market; (b) racial discrimination seems almost natural, unconscious, as illustrated by a weekly television programme Sábados Felices, which ridicules Blacks; even the most militant human rights activists only realize the discriminatory nature of this popular programme and its incitement to racial hatred when their attention is drawn to it; (c) questions on the number or percentage of indigenous people and Afro-Colombians in the army or navy, the diplomatic corps or the Catholic hierarchy are met with awkward replies or an embarrassed silence, as if the questions were unusual.

8. The 1991 Constitution and Act No. 70 of 1993 recognize and guarantee the rights and fundamental freedoms of the indigenous and Afro-Colombian communities, especially their right to collective ownership of the land and the right to preserve their natural identity, which led the Colombian Government to write the following in a report to the Working Group on Contemporary Forms of Slavery: "Because of the major institutional change which the adoption of the 1991 Constitution represented for the country, not only is the Government's current policy and goal to promote recognition of ethnic and cultural diversity, but there is now legislation in existence to support the development of the country's black communities, thereby putting an end to racial discrimination". 4/ Colombia has gone beyond the stage of debating whether to recognize the different ethnic groups and their rights and

has proceeded to the formulation of the constitutional and legal principles establishing the necessary conditions for raising the standard of living of the members of the Black and indigenous communities, as illustrated by the provisions of the 1991 Constitution and transitional article 55, which has become Act No. 70.

9. But equality of rights is not yet reflected in everyday life, owing to the slow pace of sociological and political change, resistance from the controllers of capital, clashing economic interests and the resultant widespread violence. The political will to proceed with reforms exists among the liberals and democrats, but is encountering resistance. The indigenous and Afro-Colombian communities, who have no watchword but the 1991 Constitution and Act No. 70, to which they constantly refer, are concerned at the administrative delays and afraid of losing the gains they have made under the Constitution to the major development projects which, they believe, are aimed at divesting them of their land. They also criticize the establishment of "special public order areas" intended "to combat drug-trafficking", but which they feel are in fact "dictatorships" where many members of their communities are murdered. Furthermore, administrative detention on mere suspicion of a misdemeanour or offence against public order results in population displacements, according to the people with whom the Special Rapporteur spoke. These groups fear the changes in lifestyle imposed by large modern farms and fisheries and the harm to biodiversity caused by the destruction of the environment. But these communities are organizing themselves and mobilizing, together with the forces of progress, to ensure that the hopes raised by the fundamental texts lead to action, since there is a gap between what the law says and what happens in practice; the Colombian Government affirms that it is attentive to this legitimate expectation.

I. A COUNTRY MOVING TOWARDS RACIAL AND ETHNIC INTEGRATION

A. Ethno-demographic data

10. Of a total estimated population of 37 million, 5/ the indigenous or Amerindian populations comprise 600,000 people, or approximately 2 per cent of the population, 6/ subdivided into 81 ethnic groups spread throughout the country, with high densities in the Andean and Amazonian regions. 7/

11. The Afro-Colombians, who are made up of descendants of Africans and of persons of mixed descent, either African and European or Creole 8/ or African and Amerindian, number approximately 6 million (16 per cent of the total population). 9/ They live in all parts of the country, and particularly in the large cities (Cali, Cartagena, Barranquilla) and along the Atlantic and Pacific seaboards.

B. Constitutional and legislative guarantees

12. The 1991 Constitution, which was the outcome of a large-scale political and social movement in which, notably, the indigenous and Afro-Colombian communities took part, recognizes Colombia's ethnic and cultural diversity and provides the country with the necessary tools to protect that diversity and eliminate any form of discrimination.

13. Thus article 13 of the Constitution stipulates that all Colombian men and women are equal before the law and are entitled to equal protection and treatment by the authorities. This provision prohibits, inter alia, discrimination based on race, national or family origin, language or religion. It also expressly stipulates that the State "shall promote the conditions necessary in order that equality may be real and effective and shall adopt measures in favour of groups which are discriminated against or marginalized."

14. Based on this constitutional framework, legislation and regulations have been adopted to ensure respect for traditions and to improve the economic development of the Afro-Colombian and indigenous communities, which are recognized as distinct collective subjects within the Colombian nation.

15. Pursuant to the provisions of transitional article 55 of the 1991 Constitution, which provides for the enactment of a law recognizing the right of the Black communities to collective ownership of the uncultivated land on the territory inhabited by them, the Colombian Government has been engaged in consultation with the Afro-Colombian communities. This process has culminated in the establishment of a National Commission and various regional advisory commissions, which submitted to the Congress of the Republic a bill that became Act No. 70 in 1993. This act establishes a precise legislative framework for improving the living conditions of the Black communities. The following are the most significant features of the Act:

(a) The establishment of a special constituency to provide the Black communities with a minimum of two seats in the Congress of the Republic;

(b) The right to collective ownership for the communities which have been occupying uncultivated land in rural areas adjoining the rivers of the Pacific Basin;

(c) Rights over the resources of the subsoil;

(d) The right to an education geared to these communities' needs and cultural aspirations (ethnic education); and

(e) Participation by the Black communities in the fundamental bodies for defining social policies, such as the Territorial Planning Councils (Consejos Territoriales de Planeación) and the Executive Boards of the Autonomous Regional Assemblies (Consejos Directivos de las Corporaciones Regionales).

16. Act No. 70 should, inter alia, resolve one problem of the Black communities that is directly linked to the question of the right to housing, by legalizing a de facto situation: the awarding to community members who have been living in areas adjoining the rivers of the Pacific basin for many years of land which has never been delimited and to which they have never held a written deed of title. They had thus found themselves in a situation of apparent illegality vis-a-vis the settlers and large landowners in the region and had no way of safeguarding their means of subsistence.

17. As regards the indigenous populations, it is important to note at the outset that their assertion of identity and aspirations to autonomy led in the colonial era to the delimitation of territories enjoying a degree of autonomy, the resguardos, which were under the authority of Amerindian chiefs, the Cabildos. After Colombia achieved independence, attempts were made to dismantle those territorial entities but, thanks to resistance by the indigenous populations, the protected areas over which the indigenous communities have inalienable collective ownership rights were maintained and strengthened by Act No. 89 of 1890. Subsequent laws would be based on those acquired rights and new resguardos would continue to be established.

18. Thus in accordance with the provisions of transitional article 56 of the 1991 Constitution, Decrees Nos. 1088 and 1809 of 1993 were adopted, establishing regulations relating to the right of the indigenous communities to govern themselves according to their traditions and customs, as laid down in article 330 of the Constitution. This article reads as follows:

> "In accordance with the Constitution and the laws, the indigenous territories shall be governed by councils formed and regulated according to the customs of their communities and shall exercise the following functions:
>
> (a) Supervise the application of the legal regulations concerning the use of land and settlement of their territories;
>
> (b) Design the policies, plans, and programmes of economic and social development within their territory, in accordance with the National Development Plan;
>
> (c) Promote public investments in their territories and supervise their proper implementation;
>
> (d) Collect revenue and distribute funds;
>
> (e) Supervise the conservation of natural resources;
>
> (f) Coordinate the programmes and projects executed by the different communities in their territory;
>
> (g) Cooperate in maintaining public order within their territory, in accordance with the instructions and decisions of the national Government;
>
> (h) Represent the territories before the national Government and the other entities within which they are integrated; and
>
> (i) Other matters stipulated by the Constitution and the law.
>
> Natural resources in the indigenous territories shall be developed without harm to the cultural, social, and economic integrity of the indigenous communities. The Government shall encourage participation by representatives of the communities concerned in decisions adopted in relation to that development."

19. Article 246 of the Constitution confers jurisdiction on the indigenous communities, and article 171 provides for the introduction of a special Constituency for the election of two senators for the indigenous communities who must have held positions of traditional authority in their respective communities.

20. The new constitutional provisions, which attest to a policy of non-discrimination, thus pave the way for the gradual integration of the various components of the Colombian nation, integration which is apparent in some of the progress achieved.

C. Progress achieved

21. There is, generally speaking, a growing awareness among the Colombian authorities at the national, departmental and municipal levels of the problems of Afro-Colombians and the indigenous populations. This has led to an effort to improve the participation and political representation of these communities and the establishment of ministerial or other departments responsible for examining their problems and finding solutions. The preparation of special economic and social development programmes forms part of this effort.

22. In accordance with the legislation in force (Act No. 115 of 1994), the Ministry of Education has prepared a National Ethnic Education Programme, which establishes a framework for the teaching of the languages and cultures of the various ethnic groups in the territories where they live. This programme will help to revive Afro-Colombian and Amerindian cultures and reverse the acculturation process that has been affecting the populations concerned. 10/

23. National institutions for the promotion and protection of human rights are giving increasing attention to action to combat racism and racial discrimination. The national Ombudsman and the regional ombudsmen in Cali, Cartagena and Quibdo, for example, have begun human rights education programmes for the public, with emphasis on equality and non-discrimination.

1. Efforts in support of Afro-Colombian communities

24. The Black communities are thus beginning to participate in the national planning system. They are, in particular, expected to participate in the work of the National Planning Council through a representative whom they will have nominated to the Government. They will also be equitably represented on the regional planning councils.

25. As regards participation in the development planning bodies, the Black communities will be represented in the regional autonomous assemblies responsible for the areas where the collective ownership deeds will be distributed.

26. One of the bodies deemed to be essential to effective participation by the Black communities is the study commission appointed to draw up a development plan for the Black communities. The commission, established by Decree No. 2,314 of 1994, consists of five experts from the Black communities

specializing in different fields and including an economist, environmental planning expert and a physician, assisted by eight technicians from the communities working directly at the grass-roots level.

27. As the strengthening of community organization is one of the objectives of Act No. 70, a High-level Advisory Commission was established on 29 September 1994 to verify compliance with the provisions of the Act. It consists of representatives of the Black communities in the departments of Antioquia, Valle, Cauca, Nariño, Chocó, Costa Atlantica and San Andrés y Providencia and of government representatives headed by the Deputy Minister of the Interior, who serves as Chairman, his counterparts in the Ministry of Economic Development, Mines and Energy and the Ministry of the Environment, and officials from the National Planning Department, the Colombian Agrarian Reform Institute (INCORA), the Augustín Codazzi Geographical Institute and the Colombian Institute of Anthropology. The Commission fulfils a fundamental ambition of the Black communities, namely, to have a forum for direct dialogue between Black representatives and high-level government officials with responsibility for handling questions of interest to them.

28. A regional advisory commission in each department studies regional questions of interest to the communities and transmits them to the High-level Advisory Commission. These departmental commissions are the focal point for a large number of organizations which come from all regions to explain their problems.

29. At the institutional level, a Directorate of Black Community Affairs was established within the Ministry of the Interior to handle questions relating to those communities from the government side. The Directorate was provided with the technological and administrative resources necessary for the performance of its duties. It has drawn up a plan of action providing, in particular, for the preparation of a map showing the locations of the Black communities, the identification of their needs, and follow-up on organizational activities and economic and social development.

30. In some municipalities, Black people are represented on the town council and special administrative units have been established to ensure their economic and social development. Thus in Valle, which has a large Black population (400,000 to 600,000 people out of an estimated population of 2 million), a Black Consciousness and Ethnic Groups Division has been established, employing four people of Afro-Colombian origin. Representatives of the Black community also sit on city council. Similarly, in Cartagena, where approximately 600,000 Black people live, 7 out of 20 members of the city council belong to the Black community, and the municipal government has begun a training programme for Afro-Colombian managers. The municipal department of administrative services and departments of community development are headed by Afro-Colombians.

2. Measures in support of indigenous populations

31. A programme of support and ethnic strengthening of the indigenous peoples of Colombia, covering the period 1995-1998 has been prepared by the Department of Indigenous Affairs of the Ministry of the Interior. It covers

several areas, including ethnic education programmes, improvement of health services (including the revival of traditional medicine), continuation of agrarian reform with the assignment of lands to indigenous communities that own none, economic investment, and protection of ecosystems and forests located in indigenous territories.

32. INCORA's purchase of land from private individuals or corporations for the benefit of the indigenous communities has made it possible to increase the number of resguardos. Eighty per cent of the indigenous population (approximately 482,958 people) live on 408 resguardos covering an area of 27,821,257 hectares.

33. As regards education, several public universities have adopted affirmative action programmes for students from indigenous communities. This has enabled 176 indigenous students to enrol at the National University in Bogotá. Advanced learning institutes, such as the Colombian Centre for Aboriginal Language Studies in the University of the Andes, the University of Amazonia and the Universities of the departments of Cauca and Antioquia, have also developed specific programmes on indigenous languages and culture. 11/

II. SERIOUS OBSTACLES TO BE OVERCOME

34. The Colombian Government has achieved progress in a short time, but a number of serious obstacles are still preventing far-reaching change in Colombian society. These obstacles include the difficult legacy of the past, contradictory legislation and regulations, administrative delays due to conflicts of interest, differing conceptions of economic and social development, ineffective consultation with the populations concerned, notably on the use of territorial resources, and finally endemic violence.

A. The weight of the past and economic and social disparities

35. The weight of the past is apparent above all in popular culture and certain behaviour by the élites. Thus, it still seems acceptable to ridicule Negroes on television, as evidence in a weekly television programme entitled Sábados Felices, whose racist content has been reported to the Special Rapporteur on several occasions. As a result of the mission, the Colombian authorities, including the regional ombudsman in Cartagena, recently approached the producer of the programme to draw his attention to its harmful effects.

36. Many racist prejudices and stereotypes persist in the collective conscience of Creole and white Colombians, associating black people with ugliness, ignorance, dirtiness, evil, servility, witchcraft and the devil. The former believe that black people should only engage in arduous manual labour, sports, music and domestic work. Generally speaking, the idea that Whites are culturally and biologically superior persists in Colombian society.

37. The following popular sayings, collected from people with whom the Special Rapporteur spoke, reflect the image of Blacks in Colombian society:

"I wouldn't even want a black horse";

"A Black who doesn't commit a crime on the way in will commit one on the way out";

"There's no such thing as a Black who doesn't stink";

"To be happier than a Black using a deodorant for the first time";

"Dressing a Black in a suit won't change the Black and will ruin the suit";

"Blacks in the kitchen and Whites on the rostrum";

"Everything that is ugly and bad is black";

"Blacks laugh all the time to show their teeth, since that's the only white thing they have";

"A running White is an athlete, a running Black is a thief".

38. An example of the use of Blacks for folklore purposes is reported by the Palenqueras, 12/ colourfully-dressed women selling fruit, food and sweets who serve as tourist showcases in the cities of Cartagena and Barranquilla. They are photographed for postcards without their consent and placed in prominent positions at official events for decoration purposes. But when they are out of the limelight, they are ill-treated by the police and chased out of the tourist areas to prevent them from plying their usual fruit and flower trade among the tourists.

39. In the press, Afro-Colombians are frequently presented in a negative light, especially as thieves, and black athletes are frequently given racist nicknames such as diablo negro (black devil). 13/

40. According to studies by psychologists and testimony gathered, one consequence of racial discrimination and acculturation has been a severe loss of identity among Afro-Colombians who, according to the CIMARRON movement, include Afro-Indians, Afro-Mestizos and Afro-Creoles. The members of these communities have a low self-image. The children do not know how to present themselves; Mestizos lighten or straighten their hair since "black is ugly". The children do not like their noses; they look down on themselves. Self-discrimination is also observed among Afro-Colombians. Unlike the indigenous inhabitants, Afro-Colombians do not have a collective awareness and solidarity; they are Afro-Colombians, but first they are from Chocó, Tumaco, Uraba, etc. The Afro-Colombians are looked upon as minorities and coexist together with the highly mobilized and mutually-supportive indigenous inhabitants. Thus a broad movement is developing, the "Black Communities Process", aimed at raising the Afro-Colombian communities' awareness of their values and cultural identity, defending them and securing their acceptance in the Colombian national framework. The Afro-Colombians say they want to reaffirm their cultural identity as it has been maintained and developed in the Palenque and CIMARRON movements, which have become dynamic forces that they wish to keep by recovering their traditional territories, including the fishing areas.

41. According to the CIMARRON movement, discrimination against Afro-Colombians may be illustrated by the following: 80 per cent of their basic needs are not met; 60 per cent are living in great poverty, below the poverty line; 79 per cent earn less than the minimum wage; 7 per cent earn wages of less than $40; and life expectancy is 55 compared with the national average of 60. The CIMARRON movement also maintains that there is discrimination between Afro-Colombians. Water and electricity needs are unmet for 86 per cent of Blacks and 45 per cent of Whites; 10 per cent of Blacks receive piped water as opposed to 78 per cent of Whites; 79 per cent of deaths in the Pacific region are attributable to cholera and the breakdown of health services; similarly, 100,000 out of the 500,000 annual cases of malaria occur in the Pacific region. The following disparities are reported in the area of education:

(a) Illiteracy rates: Blacks, 43 per cent in rural areas and 23.2 per cent in urban areas; Whites, 20 per cent in rural areas and 7.3 per cent in urban areas;

(b) School enrolment rates:

1. Primary: 60 per cent for Blacks as opposed to 70 per cent for Whites in urban areas; and 73 per cent for Blacks as opposed to 41 per cent for Whites in rural areas;

2. Secondary: Afro-Colombians, 38 per cent as opposed to 88 per cent for Whites in urban areas;

3. University: only 2 out of every 100 young Blacks in urban communities go to university; 80 per cent of Afro-Colombians cannot afford university studies.

42. Few Afro-Colombian students attend the National University in Bogotá, which has approximately 25,000 students. Afro-Colombians have to take an entrance examination, and there is no curriculum for them. Racist graffiti singling them out are frequently found on walls. A teacher of anthropology is said to have told one of his students: "Work like a Black so you can earn like a White." There are some private universities, but Afro-Colombians cannot afford to pay the fees of $2,000 to $3,000.

43. There is no Afro-Colombian university. Quibdo University, in Chocó, which the Special Rapporteur visited and where he held a working meeting with the Vice-Rector and teaching staff, has 98 per cent Black students and teachers but is not considered to be an Afro-Colombian university since, as the teachers themselves admitted, for a long time they themselves were the vectors of the dominant, essentially European attitudes, affirming and celebrating the superiority of the White man, which aimed at making the Black man White! They had no conception of the development of the black population with all its cultural heritage. According to the people with whom the Special Rapporteur spoke, school, university and cultural life is dominated by racial and racist symbolism; for example, Blacks on television are always

domestic servants; there is not a single Afro-Colombian journalist, except for one sports reporter, and women are used in advertisements for detergents. Recently, however, an advertisement appeared showing a white child and a black child side by side.

44. The people with whom the Special Rapporteur spoke were critical of the city of Cartagena, 40 to 60 per cent of whose inhabitants are black, for never having elected a "Miss Black Cartagena", since the female archetype is the "white woman". He was told that the economic interests which organized the "Miss Cartagena" election want to make a commercial and financial investment; the big companies work for the entire country and for interests abroad, and the country's image must be white.

45. In the city of Buenaventura, where most of the population is black, the Special Rapporteur was told that black people, especially women, are not able to find office jobs because companies require them to meet white standards of beauty, and notably to have smooth hair.

46. The full weight of the past can still be felt within the Colombian armed forces, where access to senior posts is blocked for Afro-Colombians and Amerindians. The widespread racism in the army culminated on 14 October 1995 with the tragic case of cadet Sosir Palomique Torres of the General Santander military academy in Bogotá. This 21-year-old man was subjected to racist harassment and driven to set fire to his hierarchical superior, causing his death. 14/ The people with whom the Special Rapporteur spoke consider racial discrimination to be responsible for the absence of blacks in the navy and the diplomatic corps (only one Afro-Colombian, a former Miss Colombia, was reportedly posted to a European embassy as a cultural chargé d'affaires), and the absence of indigenous or Afro-Colombian bishops in the Catholic hierarchy, in a country where the Catholic Church is deeply-rooted and active in the social sphere.

47. The weight of the past can also be seen in the disparity of economic and social statistics relating to the black and indigenous communities, on the one hand, and the rest of the Colombian population, on the other. Centuries of racial discrimination have led to marginalization, and large-scale action will be needed to wrest these communities from it.

48. The image of Amerindians in Colombian society still remains that of the "savage", as indicated by Act No. 89 of 25 November 1890, entitled "[Ley] por la cual se determina la manera como deben ser gobernados los salvajes que vayan reduciéndose a la vida civilizada" (Act determining the way in which the savages who are being won over to civilization should be governed). 15/

49. Socio-economic indicators for the indigenous populations show that 45 per cent cannot read, whereas the national average is estimated at 11 per cent. 16/ The percentage of indigenous children enrolled in primary school is 11.3, while the national enrolment rate is 85 per cent. Only 1.25 per cent of indigenous pupils reach secondary level (50 per cent nationwide). 17/

50. In the field of health, infant mortality is estimated at 110 per thousand, or four times the national average. High rates of mortality and morbidity have been linked to malnutrition in the areas inhabited by indigenous populations.

B. Contradictions in legislation and regulations and the difficulties of dialogue

51. The contradictions in legislation and regulations are attributable both to the State's desire to assign land to the Amerindian and Afro-Colombian communities and recognize the territorial autonomy of the Amerindian communities, and to its desire to preserve control over the resources of the soil and subsoil and water resources. Moreover, physical planning policies clash with the interests of these communities.

52. In this respect the Special Rapporteur notes that laws and regulations on mining operations and environmental protection conflict with the recognized territorial rights of the Amerindian and Afro-Colombian populations as described above. Thus, by declaring the ancestral lands of the members of the Afro-Colombian communities, in particular those in the Pacific region, "uncultivated land" (terrenos baldíos), Act No. 99 of 22 December 1993, which established the Ministry of the Environment and relates to environmental management and conservation, and Act No. 160 of 1994 on agrarian reform hinder recognition of their ownership of this land. Similarly, the creation of national parks and reserved forests in zones that are to be assigned to these populations seems likely to restrict their actual access to the land. Of the 42 national parks, 15 coincide with zones set aside for the resguardos. 18/ The Ministry of the Environment, acting through the autonomous regional corporations (corporaciones regionales autónomas), the Ministry of Mines and Energy, and INCORA have issued mining, forestry or agricultural permits to private national or international enterprises or to individuals without discussing with or actually involving the local populations, even though this is required by a number of acts and regulations. This policy jeopardizes the environment and allows entrepreneurs to appropriate the resources (gold, oil, timber, etc.) which could be used to improve the populations' living conditions.

C. Exploitation of natural resources, development projects, and threats to the existence of the Afro-Colombian and indigenous communities

53. The long-neglected strip of territory along Colombia's Pacific seaboard has become the object of domestic and outside ambitions. The zone known as the Chocó Biopacífico is an almost untouched ecosystem which is very rich in biodiversity and whose species are coveted by profit-seeking international firms. 19/ The Afro-Colombian and Amerindian communities, whose way of life and respect for the environment are responsible for the areas's preservation, are gradually being dispossessed of these valuable natural resources. The region's subsoil, with its rich gold reserves, is undergoing intensive mining which, because of the use of mercury, is polluting watercourses and destroying the aquatic flora that provide these communities with food. 20/ Intensive forestry is depleting the soil and exposing it to erosion. On account of the growing importance of the Pacific in the world economy, powerful national and

international economic interests are seeking improved access to the sea in order to trade with the Far East. This is bringing heavy pressure to bear on the Afro-Colombian and indigenous communities whom these interests would like to drive out in order to develop heavy infrastructure.

54. A large number of development projects (hydro-electric dams, roads, ports, tourist villages, plantations, etc.) have been, or will be, responsible for the expropriation, expulsion and dismembering of the communities. The construction of the Pan-American Highway, stretching from Alaska to Tierra del Fuego, threatens the existence of the Embera and Tule populations where it passes through northern Colombia. Similarly, the construction of the interoceanic canal known as the Atrato-Truandó canal (after the names of the rivers that will flood the canal) heralds an economic and social upheaval for the Chocó region; the Afro-Colombians and Amerindians are fearful of these developments, especially since they have not been involved in these projects and are unlikely to benefit from them.

55. In Nariño department, the construction by a logging firm of the Naranjo canal in the Patia river basin, which has altered the hydrological balance of the watercourses, has had tragic ecological consequences for the region's populations: during periods of flooding, the waters of the Patia river and its tributaries inundate the surrounding settlements, forcing the populations to move. 21/

56. To the north of Cartagena and on its outskirts, and in the area of Boquilla, the inhabitants of the Barú, Tierra Bomba and El Rosario islands have been expelled by the local authorities under pressure from powerful hotel chains, so as to enable tourist complexes to be built.

57. The indigenous populations living in the Colombian Amazon region are also worried about efforts made by certain international companies to appropriate the genomes of medicinal plants such as the yagé, albahaca and ortiga, over which they claim intellectual property rights.

D. Administrative obstacles and inertia

58. Of the 600,000 hectares which the Government plans to assign collectively to the Afro-Colombian populations, not one hectare has so far been received by them because of the opposition of powerful economic and financial interests and legislative inconsistencies.

59. The indigenous populations consider that their need for land is being satisfied too slowly. "According to data from the Colombian National Indigenous Organization (ONIC), a total of 1,196,316 hectares are needed in order to establish resguardos; 54,947 hectares are needed for sanitation and 153,898 hectares to expand resguardos. Where uncultivated land is concerned, a total of 4,493,637 hectares are needed to establish resguardos and 132,867 hectares to enlarge them". 22/

60. However, INCORA, the governmental body responsible for agrarian reform, is purchasing only 20,000 hectares a year. At this rate, it will take "70 years" 23/ to satisfy the populations' expectations.

61. Moreover, organizations representing the indigenous populations (ONIC, OREWA) informed the Special Rapporteur that the ministerial departments involved in indigenous affairs or the municipalities which receive the funds earmarked for the resguardos fail to pass on a considerable proportion of them. This problem, in conjunction with the land issue, led to the peaceful occupation of INCORA's regional headquarters in Quibdo and the headquarters of the Colombian Episcopal Conference in Bogotá, which was witnessed by the Special Rapporteur on 11 and 15 July 1996.

E. Ubiquitous violence

62. The indigenous and Afro-Colombian populations are seriously affected by violence, trapped as they are in the crossfire between the army, the drug-traffickers, the guerrilla movements and the paramilitary groups. In rural areas, where the problem of land ownership and use arises, whether to grow lawful or unlawful crops or to exploit mineral resources, Amerindian and Afro-Colombian leaders are murdered by members of paramilitary organizations armed by landowners or drug-traffickers. The establishment of military bases on the indigenous territories and in the Afro-Colombian communities is perceived as an act of cultural aggression. Moreover, the communities are suffering from the war between the guerrillas and the army, although they are alien to the conflict. Each of the sides involved in the military conflict expects the communities to support its own military strategy, with total disregard for their basic living conditions; as a result, the combatants consider them to be political enemies and legitimate military targets.

63. Since 1990, more than 87 indigenous leaders have been murdered. Many murders have still not been elucidated, such as the killing by hired assassins, in May 1994, of the leader of the Tolima Regional Indigenous Council (CRIT), Yesid Bocanegra Martínez. Nor has any punitive action been taken in response to the massacre, in December 1990, of three Arzario Indians, including the indigenous governor Angel María Torres, known as "El momo", and the indigenous leader Hugues Chaparro; according to the report by the prosecution service, members of La Popa battalion from Valledupar in northern Colombia were involved in this incident. Despite the disciplinary penalties imposed by the prosecution service, the military personnel suspected of this triple homicide were acquitted of all criminal charges by the military criminal court. 24/

64. The situation is particularly tragic in the Uraba region (Chocó and Antioquia departments), where violence is endemic on account of the clashes between the army, paramilitary groups and drug-traffickers. Many communities have been displaced. In June 1996, 165 families belonging to the Zenú indigenous community in the municipality of Necoclí (Antioquia department) in north-west Colombia had to flee from their territory on account of the war.

65. In the towns of Buenaventura and Tumaco, hired killers and members of the police carry out "cleaning-up" (limpieza) operations, murdering young Afro-Colombians whom they wrongly assume to be thieves. Graffiti encouraging people to kill Blacks have frequently appeared on the walls of Buenaventura: Hágale un favor a la pátria. Mate un negro y reclame un pavo - literally, "Do your country a good turn: kill a nigger and win a turkey". Police officers have been blamed for these graffiti.

III. CONCLUSIONS AND RECOMMENDATIONS

66. At the end of his visit, the Special Rapporteur held a working meeting with the Colombian authorities, to whom he made his recommendations orally. He informed them of the fear among the populations concerned that legislation would remain a dead letter, because they believe that there is a lack of political will. The Government of Colombia said that it was closely monitoring the situation and asserted its determination to enforce the 1991 Constitution and Act No. 70 and to effect the necessary changes.

67. Finally, the Commission and the international community should be informed that the indigenous communities with whom the Special Rapporteur met, who suffer constant racial discrimination, view the United Nations as "the Messiah" and place all their hopes in it. From Buenaventura to Quibdo, in the small village of Sanceno, and in Tumco, when the discussions were over, the same question was asked: "So what can the United Nations do for us to change and improve our situation?"

68. The Special Rapporteur reiterates his recommendations below:

(a) An act on racism and racial discrimination should be adopted;

(b) The programme Sábados Felices should be banned;

(c) The process of distributing land to the Afro-Colombian and indigenous populations should be speeded up;

(d) The administrative problems connected with subsidies to the resguardos should be resolved;

(e) Awareness of human rights should be developed in the army and the police, whose personnel should receive appropriate training;

(f) The Afro-Colombian and indigenous populations should participate more fully in the taking of decisions of concern to them;

(g) More respect should be shown for the economic, social and cultural rights of the populations concerned when development plans are drawn up and implemented, especially in the Pacific region;

(h) The populations should be protected from violence in the areas of conflict.

Notes

1/ The file on this sad chronicle is available for consultation in the Centre for Human Rights.

2/ This word, which dates back to the time when subjects of the Ottoman Empire emigrated to Colombia, is still part of local usage and has been extended to refer to all Arabs.

3/ Territory reserved for an internally-autonomous Amerindian community.

4/ Communication, dated 18 January 1995, from the Permanent Mission of Colombia to the International Organizations at Geneva addressed to the Centre for Human Rights.

5/ October 1993 census. According to INCORA (Colombian Agrarian Reform Institute), there are some 8 million Blacks among a total population of 37 million. Indigenous inhabitants number 600,000, i.e. 2 per cent of the population; they are divided into 81 groups speaking 64 languages, and are concentrated in the Amazon and Orinoco regions. In Chocó, the coexistence of indigenous inhabitants and Blacks offers encouragement for efforts to seek solutions involving cooperation. In the Pacific region, the population is 90 per cent Black and 3 per cent indigenous; in the Cauca region, the two communities are of equal size.

6/ Ministry of the Interior, Indigenous Affairs; Programme of Support and Ethnic Strengthening for the Indigenous Peoples of Colombia, 1995-1998, Santafé de Bogotá, 1995, p. 9; Colombian National Indigenous Organization, Tierra profanada. Grandes proyectos en territorios indigenas de Colombia Disloque Editores, Santafé de Bogotá 1995, p. 13.

7/ See annexes II and IV.

8/ People of mixed Spanish and Amerindian origin.

9/ Interview on 2 July 1996 with Mr. Francisco Serpa, Minister of the Interior. The Movimiento National por los Derechos Humanos de la Comunidad Negra de Colombia (National Movement for the Human Rights of Colombia's Black Community - CIMARRON) estimates that there are actually 15 million Afro-Colombians, i.e. 45 per cent of the total population. The authorities are believed to deliberately lower the figure in order to "whiten" Colombia's population and turn the Afro-Colombians into a minority.

10/ For further details, see the following publications by the Ministry of Education: Legislación sobre lad Etnoeducación; La Etnoeducación; Realidad y Esperanza de los Pueblos Indigenas y Afrocolombianos; YO'KWINSIRO. 10 años de Etnoeducación.

11/ Colombian National Indigenous Organization, Tierra profanada. Grandes proyectos en territorios indigenas de Colombia, op. cit., p. 14.

12/ The Palenqueras are Afro-Colombian women, mostly from the San Basilio palenque, near Cartagena, a territory established in the eighteenth century by Blacks who had escaped from slavery and remained independent until the Republic of Colombia was formed.

13/ For further details, see, in the Centre for Human Rights, El Negro en el Humor y en la Telenovela, a study by Eusevio Camacho Hurtado.

14/ The file on this sad incident is available for consultation in the Centre for Human Rights.

15/ It should be noted that, in decision No. C-139/96 of 9 April 1996, the Colombian Constitutional Court found that the use of the word "savage" violated the Constitution.

16/ Office of the President of the Republic, National Department of Planning, Las politicas del salto social, documentos Compes, August 1994, June 1995, p. 316.

17/ Document published by the Sub-Directorate for the Analysis and Development of Information and Education, Matriculas, docentes y establecimientos en la educación en Colombia, General Directorate for Overall Educational Planning, May 1994, pp. 9-11.

18/ See Tierra profanada, Grandes proyectos en territorios indigenas de Colombia, op. cit.; John Barnes, "The Colombian Plan Pacífico, Sustaining the Unsustainable", occasional paper, Catholic Institute for International Relations, London, 1993.

19/ For further details, see communication of 9 May 1996 from the Proceso de Comunidades Negras, "Comunidades negras y derechos humans en Colombia" (Black communities and human rights in Colombia).

20/ Ricardo Castillo Torres, El Canal Naranjo: Historia de una tragedia socio-ambiental en la cuenca baja del Rio Patia (The Naranjo canal: the story of a social and environmental tragedy in the lower Patia river basin), Cali, 1994.

21/ Communication of 1 July 1996 from the Colombian National Indigenous Organization addressed to the Special Rapporteur.

22/ Ibid.

23/ Communication of 1 July from the Colombian Commission of Jurists addressed to the Special Rapporteur.

24/ "Comunidades negras y derechos humanos en Colombia", communication of 5 July 1996 from the Proceso de Comunidades Negras addressed to the Special Rapporteur.

Annex I

PROGRAMME OF THE VISIT

28 June-15 July 1996

Friday, 28 June	Bogotá
3 p.m.	Arrival in Bogotá
5 p.m.	Meeting with Mr. Juan Manuel Osorio, Representative of the Ministry of Foreign Affairs, and Ms. Diana Muñoz, Representative of UNDP
Saturday, 29 June	Bogotá
	Rest
Sunday, 30 June	Bogotá
5 p.m.	Visit to the headquarters of the movement for the rights of Colombia's Black community (CIMARRON) for a meeting
Monday, 1 July	Bogotá
9 a.m.	Meeting with representatives of the Colombian National Indigenous Organization (ONIC) and the Colombian Commission of Jurists, and Senator Lorenzo Muela, representative of the indigenous populations in the Senate
11 a.m.	Meeting with CIMARRON representatives
3 p.m.	Meeting with representatives of the Black cultural centre (Las Negritudes) and of the Proceso de Comunidades Negras (Black communities organization)
Tuesday, 2 July	Bogotá
8 a.m.	Meeting with Mrs. Alba Otilia Dueña du Perez, General Manager of the Colombian Agrarian Reform Institute (INCORA); Mrs. Irma Vicenteño, indigenous programme adviser, social solidarity network; Mrs. Luisa Marina Garzón, delegate to the Act No. 70 technical commission; Mrs. Nydia Restrepo de Acosta, deputy legal manager of INCORA; Mr. Cesar Augusto Torres Riascos, manager of the land ownership programme for the Black communities; Mrs. Morcela Bravo, Chief of INCORA's Black and Indigenous Communities Division; Mrs. Constanza Chacón, Minister of the Environment on the Act No. 70 technical commission; Mr. Victor Morales, delegate from the Colombian Geographical and Agricultural Institute

10 a.m.	Meeting with Mrs. Gladys Jimeno Santoyo, Director-General for Indigenous Affairs, Ministry of the Interior
3 p.m.	Interview with Mr. Francisco Serpa, Minister of the Interior
4.30 p.m.	Interview with Mr. Rodrigo Pardo García Peña, Minister for Foreign Affairs
Wednesday, 3 July	Bogotá-Cali
10 a.m.	Interview with Mr. Jaime Córdoba Triviño, Ombudsman
2 p.m.	Meeting with Mr. Carlos Vicente de Roux, Mr. Jorge Ivan Cuervo and Mrs. Gloria Zamora, Office of the Presidential Adviser for Human Rights; Mr. Danilo Valbuena Usso, Mr. Jorge Rubio Cifuentes, Prosecution Service; Mrs. María Claudia Pulido Escobar, Head of the National Unit of the Office of the Procurator for Human Rights; Mrs. María Clova Galvis, Office of the Procurator-General, International Affairs
4 p.m.	Meeting with Mr. Gernán Antador, Office of the Presidential Adviser on Social Policy; Mr. Antonio Muñoz Vizcaino, Indigenous Communities Health Care Department, Ministry of Health; Mrs. Angela Bonellez, Directorate-General of Social Security (Health), Ministry of Health
8 p.m.	Departure for Cali
Thursday, 4 July	Cali-Buenaventura
11 a.m.	Departure for Buenaventura (by road)
3.30 p.m.	Meeting with Mr. José Felix Ocoro, Mayor of Buenaventura, and Mr. Luis Alfonso Rodriguez, Adviser, Pacific Coast Municipalities Association
Friday, 5 July	Buenaventura
10.15 a.m.	Meeting with representatives of the following NGOs: Proceso de Comunidades Negras, Asociación Nacional de Pescadores, Asociación de Trabajadoras de la Costa Pacífica
Noon	Meeting with representatives of the following NGOs: Asociación de Mujeres Jovenes Afro-Colombianas (AMOJA); Asociación de Mujeres Campesinas; SOWETO Afro-American Study Circle
3 p.m.	Return to Cali

Saturday, 6 July	Cali
10 a.m.	Meeting with Mr. Mauricio Guzman, Mayor of Cali, Mr. Jorge Ubemar Delgado, Chairman of Cali City Council, Mr. Reynaldo Botero Bedoya, Regional Ombudsman, Mr. Gonzalo Ortiz Jaramillo, Chief, División Negritudes y Grupos Etnicos; Mrs. Olga María Betancourt, Director of the Under-Secretariat for Specific Groups
3 p.m.	Meeting with representatives of the following NGOs: Proyecto Comunidad y Etnocultura; Escuela de Medecina Tropical para la Costa Pacífica; Fundación Severo Mulato; Fundación para el Desarollo de los Afro-Colombianos (FUNDAFRO); Movimiento Nacional de las Comunidades Negras
5 p.m.	Meeting with representatives of the following NGOs: Asociación Regional Indígena del Valle de Cauca (ORIVAC); Consejo Regional Indígena del Cauca (CRIDEC); Corporación Almirante Padilla; Asociación de Jóvenes para el Desarollo de la Cultura Negra e Indígena
Sunday, 7 July	Cali-Tumaco
9 a.m.	Departure for Tumaco
4 p.m.	Visit to the headquarters of the regional palenque (Black community) in Nariño department; working meeting
Monday, 8 July	Tumaco
10 a.m.	Meeting with representatives of the following NGOs: Palenque Regional Nariño; Unidad Indígena Pueblo AWA; Movimiento Cívico Alerta SOS; Cooperativa de Agricultores del Pacífico; Organización Francisco Pizarro de Salahonda
3 p.m.	Meeting with Mr. Fernando Pinson, personal secretary to the Mayor of Tumaco; Carlos Eli Barrios Mejía, Vice-Chairman of the town council; Diego Arteaga, municipal councillor
5 p.m.	Meeting with Mr. Leonardo Sanson, Comprehensive Fisheries Project; Mr. Hector Antonio Angulo, Fundación Congona; Mr. Lidoro Hurtado Quiñones, Bajo Mira y Fra Central Board; Mr. Thomas Eliecer Cortés, Corponariño; Mr. Tito Francisco, Angulo Comunidad; Ms. Nella Gruezo Villarreal, Fundación Rafael Valencia
Tuesday, 9 July	Return to Cali

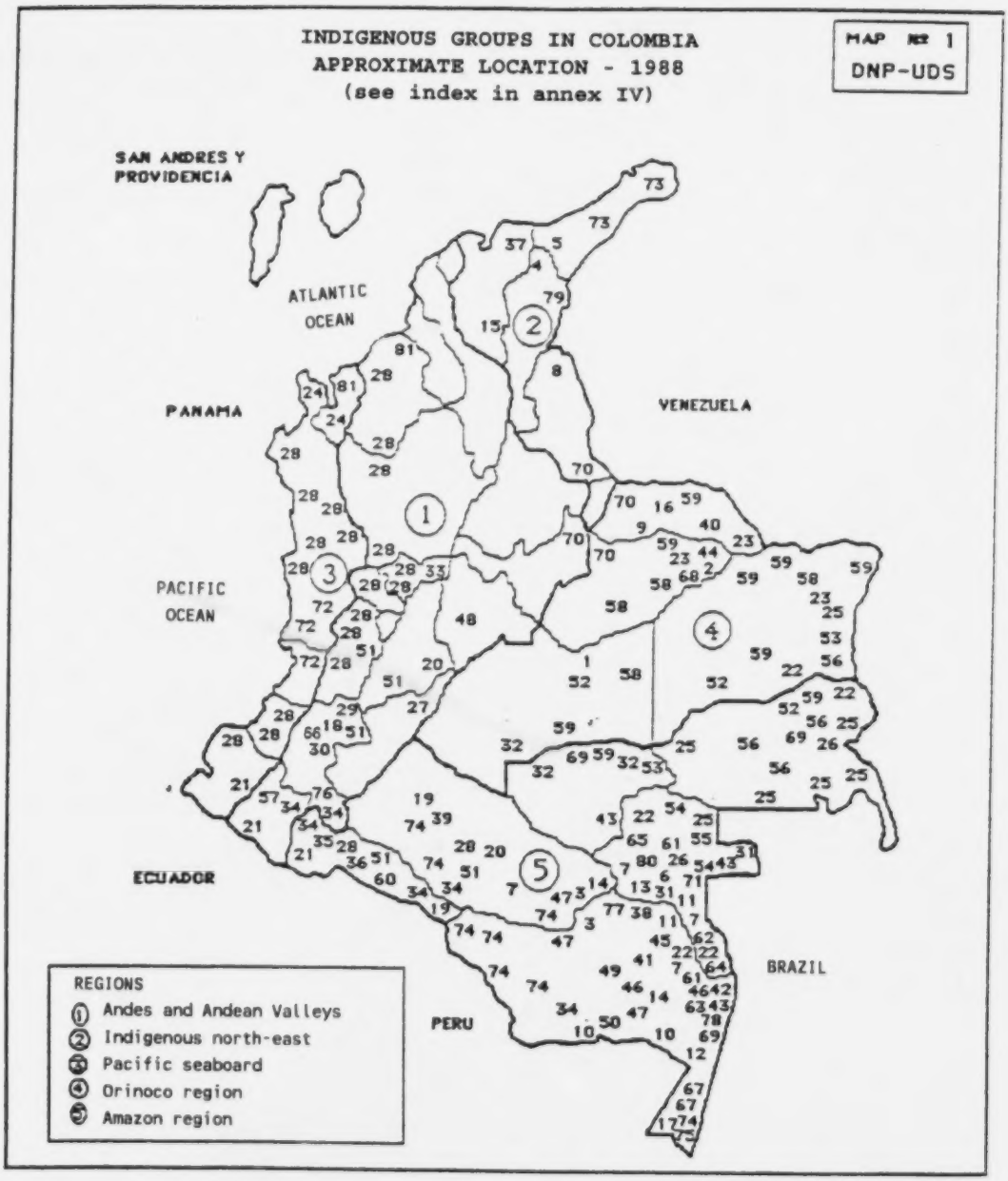
Wednesday, 10 July	Cali-Quibdo
10.30 a.m.	Departure for Quibdo
3 p.m.	Meeting with Mr. Umberto Mena Mena, head of the cabinet of the Governor of Chocó department; Ms. Emiliana Palacios Valencia, Ministry of the Interior; Mr. Jesús Alberto Mosquera, mayor of the city of Quibdo; Mr. Hector Manuel Hinestroza Alvarez, municipal councillor
4 p.m.	Meeting with Mr. Efraim Rojas Alvarez, Regional Ombudsman
6 p.m.	Meeting with Mr. William Murillo Lopez, Vice-Chancellor of Diego Luis Córdoba Technological University in Chocó; Mr. Néstor Emitis Mosquera, Dean of the Faculty of Education; Mr. Fugi Lucas Gil Ibargüen, Director of the Pilot Experimental Centre
Thursday, 11 July	Quibdo
10 a.m.	Meeting with representatives of the following Afro-Colombian NGOs: Asociacíon Campesina del Atrato; Movimiento de Comunidades Negras; Palenque Afro-Colombiano; Asociación de usuarios campesinos del Chocó; Red de organizaciones del San Juan; CIMARRON movement
11.30 a.m.	Meeting with OREWA, an indigenous populations' organization
6 p.m.	Interview with Mrs. Zulia Mena García, representative of the Afro-Colombian communities in Congress
Friday, 12 July	Quibdo-Cartagena
10.30 a.m.	Departure for Cartagena
Saturday, 13 July	Cartagena
9 a.m.	Meeting with Mrs. Claudia Fadul, Secretary-General, acting Mayor of Cartagena; Mr. Lacy des Cortes, Administrative Services Secretary; Ms. Judith Pinedo, human development officer; Mr. Nicolas Paresa, internal affairs officer; Mr. Alcides Arrieta, Secretary for Community Development; Ms. Joan McMaster, Head of Protocol
11 a.m.	Meeting with Mr. Anibal Olier, Regional Ombudsman

3 p.m.	Meeting with representatives of the following NGOs: Proceso de Comunidades Negras; Asociación de organizaciones de comunidades negras de Sucre; Asociación departamental por los derechos de las comunidades negras del Cesar; Asociación de mujeres vendedoras de frutas "Orika"; Programa etnoeducación Palenque; Communidades Negras de Barranquilla-Atlántico; Centro de Cultura Afrocaribe
Sunday, 14 July	Cartagena-Bogotá
8.30 p.m.	Departure for Bogotá
Monday, 15 July	Bogotá
9 a.m.	Meeting with representatives of the Coordinating Committee of the Indigenous Peoples of the Amazon Basin
10 a.m.	Meeting with Mr. Angelino Garzón, adviser to the Deputy Minister of Labour
11 a.m.	Review meeting with Mrs. Pilar Gaetan, Director for Special Affairs in the Ministry of Foreign Affairs
2.30 p.m.	Interview with Mgr. Giraldo, Chairman of the Colombian Episcopal Conference, and Father Dario Etcheverri, responsible for pastoral works and for the Justice and Peace Section, followed by a discussion with the Indians who were organizing a "sit-in" at the headquarters of the Episcopal Conference
6 p.m.	End of mission: departure for Cotonou

Annex II

ADMINISTRATIVE DEPARTMENTS
OF COLOMBIA
Caribbean Sea
Lake
Maracaibo
VENEZUELA
PANAMA
ECUADOR
PERU
BRAZIL
Pacific Ocean
SAN ANDRES
PROVIDENCIA
SANTA MARTA
GUAJIRA
BARRANQUILLA
ATLANTICO
CARTAGENA
MAGDALENA
CESAR
SUCRE
CORDOBA
BOLIVAR
NORTE DE SANTANDER
CUCUTA
SANTANDER
ANTIOQUIA
ARAUCA
CHOCO
BOYACA
CASANARE
CALDAS
RISARALDA
CUNDINAMARCA
VICHADA
QUINDIO
TOLIMA
VILLAVICENCIO
META
VALLE DEL CAUCA
CAUCA
HUILA
GUAINIA
SAN JOSE DEL GUAVIARE
GUAVIARE
NARIÑO
PASTO
PUTUMAYO
CAQUETA
VAUPES
AMAZONAS
Amazon
Legend
International frontier
Departmental boundary
Capital of the Republic
Capital of the Department
intendencia or comisaria
Main river
Scale 1:7'000.000
0 100 200 km
Scale
0 100 200 km

Annex III


INDIGENOUS GROUPS IN COLOMBIA
APPROXIMATE LOCATION - 1988
(see index in annex IV)
MAP Nº 1
DNP-UDS
SAN ANDRES Y PROVIDENCIA
ATLANTIC OCEAN
PANAMA
VENEZUELA
PACIFIC OCEAN
ECUADOR
PERU
BRAZIL
REGIONS
1 Andes and Andean Valleys
2 Indigenous north-east
3 Pacific seaboard
4 Orinoco region
5 Amazon region

Annex IV

COLOMBIA'S INDIGENOUS PEOPLES: APPROXIMATE LOCATIONS

(See numbering on map in annex)

Ethnic group	Ethnic group	Ethnic group
1. Achacua	28. Embera	55. Pisimira
2. Amorua	29. Guambiano	56. Puinabe
3. Andoke	30. Guanaca*	57. Quillacinga
4. Arhuaco	31. Guanao	58. Saliba
5. Arzario	32. Guayabero	59. Sikuani
6. Bara	33. undetermined***	60. Siona
7. Barasana	34. Inga	61. Siriano
8. Bari	35. Kamsa	62. Taiwano
9. Betoye	36. Kofan	63. Tanimuka
10. Bora	37. Kogui	64. Tariano
11. Cabiyari	38. Letuama	65. Tatuyo
12. Yuri	39. Macaguaje	66. Totoro
13. Carapana	40. Macaguane	67. Tikuna
14. Carijona	41. Macuna	68. Tsiripu
15. Chimila	42. Macusa	69. Tukano
16. Chiricoa	43. Macu-Nukak	70. Tunebo
17. Cocoma	44. Masiguare	71. Tuyuca
18. Coconuco	45. Matapi	72. Waunana
19. Coreguaje	46. Miraña	73. Wayuu
20. Coyaima	47. Muinane	74. Witoto
21. Cuaiker	48. undetermined**	75. Yagua
22. Cubeo	49. Nonuya	76. Yanacona
23. Cuiba	50. Ocaina	77. Yauna
24. Cuna	51. Paez	78. Yucuna
25. Curripaco	52. Piapoko	79. Yuco
26. Desano	53. Piaroa	80. Yuruti
27. Dujos	54. Piratapuyo	81. Zenu
		Estimated total population 603,280

Source: DNP, "Los Pueblos Indígenas de Colombia, 1989". Estimated population in June 1993.

* According to recent studies, this group has merged with the Páez ethnic group.

** Descendants of the Muiscas, inhabiting the Cota resguardo in Cundinamarca department.

*** Corresponds to the former mining reducción (resettled community) on the Cañamomo and Lomaprieta indigenous resguardo in Caldas department.

UNITED
NATIONS

E

Economic and Social
Council

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COLLECTION

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 13 of the provisional agenda

IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

Report By Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Addendum

Mission to Kuwait

CONTENTS

	Paragraphs	Page
Introduction	1 - 11	2
I. SITUATION OF MIGRANT WORKERS	12 - 42	3
A. The exploitation of unskilled and domestic workers	15 - 17	4
B. Absence of national legislation to protect domestic workers	18 - 42	5
II. BIDUN, AN EVOLVING CONCEPT	43 - 63	11
A. A policy of national assimilation and integration	44 - 47	11
B. Exclusion and marginalization	48 - 49	12
C. Nationalization and the search for foreign nationalities	50 - 56	12
D. Detention	57 - 63	13
III. CONCLUSIONS AND RECOMMENDATIONS	64 - 69	14
Annex: Programme of the visit		17

Introduction

Purpose of the mission

1. The Special Rapporteur visited Kuwait from 17 to 27 November 1996 at the invitation of the Kuwaiti Government and pursuant to his mandate under Commission on Human Rights resolution 1996/21, endorsed by the Economic and Social Council in its decision 1996/259.

2. The mission was undertaken after an exchange of correspondence, and following consultations, between the Kuwaiti Government and the Special Rapporteur as a result of allegations which he had received concerning racial discrimination and xenophobia with regard to migrant workers, particularly housekeepers of Indian, Sri Lankan, Bangladeshi and Philippine origin. 1/ The observations of the Kuwaiti Government were published in report A/50/476 (paras. 14-15) and submitted to the General Assembly and the Commission for consideration. The Special Rapporteur's attention has also been drawn to the situation of the Bidun.

3. It then seemed useful for him to visit Kuwait in order to meet the country's political leaders, representatives of non-governmental organizations (NGOs) and the communities concerned. The Special Rapporteur also talked with officials of the embassies of Bangladesh, India, the Philippines and Sri Lanka who were responsible for labour-related matters. A detailed list of the individuals and bodies whom the Special Rapporteur met is provided in annex to this report.

General comments

4. It must first be emphasized that the mission was carried out in an atmosphere of complete frankness and was facilitated by the willingness of the Kuwaiti authorities to engage in dialogue. The psychological effects of the Gulf war were still evident during these discussions and considerably complicated the task of approaching and understanding the question of migrant workers and that of the Bidun, who were variously described as undocumented persons, stateless persons and illegal residents.

5. The Kuwaitis are very concerned by the situation of the POWs 2/ held in Iraq. This point was anxiously raised at every meeting. Some feared that the question of human rights was being raised as a diversion or with a view to "destabilizing Kuwait, which is the most democratic country in the region and the one which shows the greatest respect for human rights". They were assured that such was not the purpose of the Special Rapporteur's visit, which he had made at the Government's invitation as a result of the complaints of racial discrimination and xenophobia transmitted to him.

6. In order fully to understand the manifestations and incidents of racial discrimination and xenophobia in Kuwait, it is important to bear in mind the country's demographic, social and cultural situation.

7. Of an estimated total population of about 2 million, there are approximately 700,000 Kuwaitis and 1,300,000 foreigners. 3/ The Kuwaitis are a minority in their own country, for it is estimated that there are nearly twice as many foreigners as Kuwaitis, including some 120,000 Bidun.

8. Less than 20 per cent of the country's manpower is Kuwaiti, although 10,000 graduates are unemployed; some point to this as proof of Kuwait's openness and generosity towards foreigners. But is it not rather a question of national policy?

9. Is it fair to speak of racial discrimination or xenophobia in Kuwait? The answer must be qualified, since it is the social system which leads to the exploitation of unskilled and, in particular domestic workers, most of them women, and to the marginalization of the Bidun. However, xenophobic tendencies are beginning to appear and are strengthened by the attitudes of the rich towards the poor. Kuwait still needs foreign manpower, both skilled and unskilled, but the country feels crushed under the weight of foreigners. There is a segment of society which considers that the nation's cultural identity must be preserved and is pressuring the Government to provide it with a "separate and protected life". Since social services such as education and health are free, some Kuwaitis feel that the well-being of foreigners is being placed before their own. For example, Kuwaitis feel disadvantaged when they want to see a doctor and learn that all appointments have been taken by foreigners. For that reason, the general public is demanding separate hospitals and doctors whose only patients are Kuwaitis; some are calling for separate neighbourhoods.

10. The Government is resisting these xenophobic tendencies, which manifest themselves as fear and rejection of foreigners and a wish to live separately from them; it has refused to build hospitals for foreigners, separate from those for nationals, though there is housing for foreign workers. Thus far, no racist or xenophobic statements have been noted, but the issue of the Bidun remains unresolved.

11. The legislation on nationality is discriminatory in that it establishes a hierarchy of citizenship. Those who acquired Kuwaiti nationality by virtue of having settled in the country prior to 1920 are full citizens, while those who acquired nationality in other ways do not enjoy the full range of civil and political rights. Furthermore, the child of a Kuwaiti woman married to a Bidun or a foreigner is not Kuwaiti. Kuwaiti nationality is granted at the discretion of the Ministry of the Interior and, as such, does not benefit from any judicial guarantees. Generally speaking, Kuwaiti nationality is considered a privilege, not a right.

I. SITUATION OF MIGRANT WORKERS

12. The first part of this report will deal with migrant workers, their recruitment and working conditions and, in particular, their treatment, which gives rise to allegations of racial discrimination and xenophobia or of human rights violations in general.

13. There are serious problems with regard to the situation of foreign and, particularly, unskilled workers, including domestic workers of Asian origin, most of whom are women. Their status is not governed by any single body of legislation, and their fate is wholly in the hands of their employers and the administration; they enjoy no protection under the law. Many employers mistreat their servants, who often flee and take refuge in the embassies of

their countries. Others, rightly or wrongly accused of stealing from their employers, are captured while in flight and taken to the holding centre in Dasma, then expelled without any legal protection.

14. Living conditions in the Dasma holding centre and the Talha prison, where male and female workers involved in litigation with their employers are held while awaiting expulsion, are extremely poor. At the Dasma Centre, during the Special Rapporteur's visit, 125 men were held in one room and some 60 women in another. Hygiene leaves much to be desired, and there is considerable promiscuity. This situation constitutes a violation of the rights of foreign workers.

A. The exploitation of unskilled and domestic workers

15. As stated above, two thirds of the Kuwaiti population is of foreign origin and includes nationals of between 100 and 145 countries. A distinction must be made between (a) the public and private sectors, the second of which includes the petroleum, or economic, sector; (b) domestic workers; and (c) manpower (skilled and unskilled).

1. Social and professional categories

16. According to specialists in Kuwaiti labour law, there are four social and professional categories: (a) the government sector (civil service), in which recruitment procedures and working conditions pose no problem (salaries of KD (Kuwaiti dinars) 450 or 650 per month and housing provided by the Government); (b) the public sector, which includes corporations, companies and State cooperatives and is covered by Labour Act No. 38 of 1964; (c) the petroleum sector, which is covered by Kuwaiti labour law. Thus, according to the specialist in labour law at the Kuwait Faculty of Law, these sectors are governed by legislation which includes general provisions based on international conventions; however, some provisions should be amended to take account of international conventions to which Kuwait attaches great importance, particularly since the country's liberation from invasion; and (d) domestic workers, whose situation is covered by the Civil Code and general legislation.

2. Indispensable foreign workers

17. Kuwait is a small country whose prosperity attracts nationals of various countries, within and outside the region, which are experiencing economic problems. The oil boom and rapid development of the country have resulted in a demand for manpower. The need for skilled and unskilled labour is met largely by immigrants, most of whom are from Arab countries (Egyptians and Palestinians) 4/ and have Egyptian, Jordanian or Lebanese passports. Recently, skilled workers from India and Pakistan have been recruited. Most unskilled workers, who are employed primarily in homes (as maids, nannies, guards, houseboys, cooks, chauffeurs, etc.), by cleaning firms and in the petroleum industry, come from Bangladesh, India, the Philippines or Sri Lanka. The latter group, comprising 850,000 persons, experiences the greatest number of problems (ill-treatment, non-payment of wages or sexual abuse).

B. Absence of national legislation to protect domestic workers

1. Random recruitment methods

18. There is no legislation governing the recruitment of domestic workers. It is handled by Kuwaiti recruitment agencies, which maintain a list of such workers who live abroad and wish to come to Kuwait. It must be said that some Kuwaiti recruitment agencies simply traffic in workers in order to make money. Some, for example, undertake to recruit and place 1,000 domestic workers per year. Since supply exceeds demand, competition is keen and wages range from KD 20 to KD 45. There is even rivalry between the States which export manpower, which have no coherent, stringent policies; each defends its own interests as determined by its unemployment rate.

19. In principle, domestic workers are hired for a two-year period, though some receive five-year contracts. Since each employer or sponsor has a right to two household workers, they make certain that an unsatisfactory one can be expelled and replaced by another. A servant who flees or is expelled must be replaced. For this reason, employers confiscate the travel documents of their employees (passports containing visas and other administrative papers) and hold on to them so that they can be turned over to the police if it is necessary to expel the employee. Most domestic workers have no contact with anyone outside, or even within, Kuwait. Since most of them do not know how to read, they do not know their employer's address. They leave their employer's home and take refuge in a safe house maintained by the embassy of their own country if they are mistreated, beaten, wounded or raped, are homesick and wish to leave before the end of their contract or are seeking a better-paid job.

2. The sponsor or Master

20. Anyone seeking to employ a domestic worker - every Kuwaiti has a legal right to employ two such workers (for example, a maid, chauffeur or cook) - turns to one of the many recruitment agencies. He makes his selection from a catalogue presented to him and pays KD 400; in a month or two, he accepts delivery of his "property" as "Cafil" or sponsor. Thereafter, the servant is his; some claim that there is a contract but, in reality, neither party has any rights or obligations with regard to the other. Domestic workers customarily receive about KD 35 per month, with progressive rises as and if the employer so chooses. The employer provides the employee with housing, food and clothing. In practice, there are no working hours; the servant works in the kitchen, does the dishes and laundry, acts as babysitter and, in short, functions as the maid of all work. Domestic workers have a right to one day off. Those authorized by their employers to leave the house gather in the central part of Kuwait City on Fridays, but others are kept at home by their employers for fear that they might run away or get pregnant.

21. Employer-employee relationships are complicated by the latter's problems in adapting to the Kuwaiti social and cultural environment. Generally speaking, domestic workers from the above-mentioned Asian countries do not speak Arabic and know nothing about Kuwaiti culture. Those from Bangladesh often have nothing in common with their employers except Islam. It is therefore difficult for such employees to adapt to the customs of the host

country. As communication is extremely difficult, employers sometimes use brutal methods, including beating, to make themselves understood and to explain what is expected of a maid. Furthermore, Kuwaiti women are increasingly aware of the social problem raised by entrusting their children to servants with a culture, and even a religion, different from their own and allowing them, in a sense, to bring up and exert a certain amount of influence over the children.

22. One of the consequences of the method of recruiting domestic servants, the living conditions imposed on them and the problem of adaptation to Kuwaiti society and to the families with which they live is that relations between employers and employees can easily become strained.

23. Many domestic workers are faced with a dilemma as a result of the ill-treatment they experience. Generally speaking, they have contracted debts in their own countries in order to pay visa and recruitment fees. They cannot go home unless they are in a position to pay those debts and to cover the cost of the return trip, for which the employer may refuse to pay. The employer may also seek reimbursement of the money he paid to the recruitment agency (KD 400). For that reason, in addition to confiscating their employees' documents, many employers withhold three or four months' salary.

24. A domestic worker who quits his job, may therefore be accused of having stolen his employer's property. An official search is begun; he is listed as "absconded" and his photograph is published in the newspaper with the words "Please contact ...". The employer owns the employee, who is his property and belongs to him. He can make the employee go back to work or leave him in prison, since he is now a Bidun, "an undocumented or illegal resident", and, as such, can be imprisoned at the Dasma Administrative Centre and later at the Talha prison. He will then be obliged to pay for his own ticket home unless his embassy or the Kuwaiti Government does so.

25. Some officials admit that domestic workers are subjected to ill treatment but, despite reports made by a free press which spares neither the National Assembly nor the Government they do not recognize the importance or the seriousness of the problem. They say that, although there have been some abuses it is important not to generalize and that beatings, wounding and rape are not as frequent as claimed. It is also said that modesty makes women hesitate to speak up unless a major scandal is involved. The most frequent complaints concern non-payment of domestic workers' wages (KD 25-35) over a period of several months.

26. A communication from the Kuwaiti Government dated 13 April 1995 states: "In the legal area, it may be noted that the Kuwaiti courts sentenced to penalties ranging from a few months in prison to 10 years' imprisonment a number of persons found guilty of sexual assault on housekeepers".

3. Situations mentioned by embassy representatives

27. The information on the situation of domestic workers gathered from institutions, journalists, NGOs, the University and surveys carried out at the Dasma Centre and the Talha prison has been corroborated by the Special Rapporteur's interviews with the officials of the embassies of Bangladesh,

India, the Philippines and Sri Lanka who are responsible for labour-related matters and regularly visit Dasma to see their compatriots who are imprisoned there.

28. The Special Rapporteur wishes to thank all those whom he met for their valuable assistance in providing him with information. What follows is a synthesis of that information which he hopes will make it possible to grasp the complexity of the situation of domestic workers in Kuwait.

29. There are 130,000 Bangladeshi workers in Kuwait, including 7,000-10,000 domestic workers who are "appreciated for their diffidence" and because, like the Kuwaitis, they are Muslims. A further 6,000 Bangladeshis were recruited by the Kuwaiti army after Bangladesh played an active role in the liberation of Kuwait. These soldiers are responsible for demining operations, surveillance of strategic points and military logistics. The problems encountered by Bangladeshi workers concern non-payment of wages, residence permits and visas. Lawsuits can take time, and the plaintiffs give up and thus lose their cases. Generally speaking, such cases involve unskilled workers in the cleaning sector (streets, schools and hospitals). There are 400 cleaning firms in Kuwait. Salaries range from KD 25 to KD 30 per month; workers are housed in barracks in the Hassabia and Abbasia neighbourhoods, crowded together and with bunk beds. Only two of these enterprises offer acceptable wages and housing, whereas several companies in the industrial sector make an effort to provide good housing and high wages and observe the provisions of Kuwaiti labour law. Their employees are provided with public transport but not food and, generally speaking, their living conditions are harsh and inhumane, leading one migrant worker to say "It's exploitation; the living conditions are unbearable, like in a prison. I have found no justice with my Muslim brothers". The Kuwaiti authorities lend an ear to complaints but try to avoid repatriating workers who have become illegal and endeavour to place them with another company, particularly if the previous employer has gone bankrupt. Setting aside the question of the poor living conditions at the Damas Centre, some consider that it functions as a little court where disputes are resolved by mutual consent.

30. Bangladesh had passed an act prohibiting Bangladeshis under the age of 25 from travelling abroad in order to take jobs as domestic workers; that act was repealed four months ago.

31. Several regrettable cases of the sexual abuse of domestic workers are before the courts, but proceedings are protracted. The information provided by the Ministry of Justice shows that, in fact, cases are carried over from year to year. Because of this slowness of the judicial machinery, those interviewed by the Special Rapporteur preferred the Dasma Centre, which, in their opinion, functions as a miniature court where disputes concerning matters such as back payment of wages or purchase of tickets home are resolved by mutual consent. An employee who quits his job or falls ill must request his official documents from his sponsor and the employee himself, or his embassy, often has to pay his ticket home. The fingerprints of persons who leave or are expelled are taken, and they are prohibited from returning for a period of two or five years, respectively. In order to avoid problems, Bangladesh has requested the recruitment agencies to form a national association and to designate a representative who would contact the countries

that supply manpower and domestic workers in order to establish a common policy. It has also been suggested that an act setting a minimum wage for employees of cleaning agencies, guards and domestic workers should be adopted; that the regulations governing residence permits (for workers, the work permit takes the place of a residence permit) should be changed; that the repatriation of those who wish to return home, or who are obliged to do so owing to illness or lack of a visa, should be facilitated; and that the situation of shepherds should be improved. The latter are the most neglected category of workers: they live in inhuman conditions, have no contact with the city, and are supplied with food by their employers only once every two weeks, even though the law explicitly prohibits the employment of shepherds unless their contract stipulates that they are to be provided with food - a requirement which employers blithely ignore. So-called seasonal fishermen also live in sub-standard conditions in makeshift huts near Doha.

32. The Philippines is a major exporter of manpower to Kuwait, where 55,000 Filipinos, including 28,000 domestic workers, of whom 15,000-20,000 are illegal, are employed. Domestic workers are recruited by illegal agencies in the Philippines; although the exploitation of workers has been prohibited by its Government since 1988, 25-30 persons without visas are recruited each month, for a fee, by private agencies. Philippine domestic workers are in the greatest demand because they are the most educated, and they command higher recruitment fees than nationals of other countries. Recruitment agencies charge KD 450-480 for Philippine housekeepers, whose monthly wages are KD 45-65; consequently, their employers are more demanding, a fact which leads to stress and violence and causes the workers to run away. Because domestic workers from the Philippines are more educated than others, they display more confidence and protest ill-treatment and abuse, a fact which irritates employers and leads to incidents, some of which are tragic and are exposed by the press. Domestic workers from other countries, owing to their level of education and to the language barrier, are less likely to complain.

33. The Philippine embassy maintains a shelter that houses about a hundred domestic workers in breach of an expulsion order issued at their employer's request after ill treatment, violence or rape or because they are pregnant or ill. Most of them are women; of the 102 cases mentioned during the Special Rapporteur's visit, only one involved a man. While it is estimated that 60-70 per cent of those who take refuge at the embassy do not tell the whole truth, there are photographs of domestic workers sporting black eyes. Some point out that it is comforting to realize that the Kuwaiti authorities are, at least, aware of such lapses and willingly cooperate with the embassy; an example of this cooperation is the recent opening of a Kuwaiti embassy in Manila.

34. There are 80,000 domestic workers and 20,000 skilled workers from Sri Lanka in Kuwait; the latter are protected by the country's labour legislation, but the former have serious problems. Employers often refuse to arrange for the issue of a residence permit, even after two or three years of service and, generally speaking, these workers, most of them women, cannot go home without that permit. They are sent to the Dasma Centre, where two or three months pass before their cases are dealt with.

35. Employers often refuse to pay for an employee's ticket home and many domestic workers have taken refuge at the embassy. Although non-payment of wages is frequent, it is difficult to prove; an employee may state that his wages have not been paid for 18 months but, without a pay slip, it is difficult to provide evidence that can be brought before a court. Nothing can be done if the employer denies everything.

36. The solution currently under consideration would entail keeping a record of wages or, with the consent of the Kuwaiti authorities, requiring part of an employee's wages to be deposited in a bank account. The Sri Lankan Government therefore proposes to include in labour contracts a provision stipulating that employers must pay 80 per cent of their employees' wages into a bank account in Sri Lanka. Visas issued to immigrants must be communicated to the Sri Lankan embassy in Kuwait so that the name and address of the sponsoring families of domestic workers can be recorded. In that regard, it has been suggested that it would be better for the employer to contact the embassy or the Dasma Centre to determine whether a missing domestic worker is there before applying to the police rather than following the reverse procedure, which is the current practice and results in an arrest.

37. It must be emphasized that Government employees, even foreign ones, are usually well treated and receive social benefits such as schooling, health care and housing free of charge. However, problems arise in large companies, whose workers are exploited. Of the 20,000 jobs in State cooperatives, 95 per cent are filled by foreigners and 5 per cent by Kuwaitis. There are agricultural, consumer (central markets, handicrafts and savings) and investment cooperatives. With few exceptions, wages are not paid and, except in the petroleum branch, the housing provided by companies in the economic sector is inadequate; workers responsible for the cleaning and upkeep of public buildings, squares and streets live in barracks in poor neighbourhoods, such as Hassaoui and Abbasia. They are housed six or seven to a room, hygiene is poor, and there is considerable promiscuity. They work two eight-hour shifts per day and are paid KD 30-35 per month. Before leaving their home countries, they are required to pay a security to the recruiting agency; Iranians, for example, pay KD 700-800 for a visa. They are promised high wages but, on their arrival in Kuwait, their contracts are rewritten. They are hired for two- to five-year periods and their families are left behind in their home countries. They are afraid to return home until they have repaid the money they borrowed to cover their recruitment expenses (visa and travel costs). It is a vicious circle: without a residence permit, an "undocumented" migrant worker has no legal right to remain in the country. He is arrested and taken to Dasma, then transferred to the Talha prison where, after being held for an indefinite period, he can be expelled or repatriated.

38. Problems also arise in connection with family situations (for example, marriage or family reunification). Marriages are registered at the embassies of those concerned; in the case of Sri Lankans, for example, the Government must give its authorization and determine that neither of the would-be spouses is registered as married in the home country. Family reunification rights vary according to the type of visa. Holders of No. 20 visas, in other words, domestic workers, may not be joined by their spouses; when two holders of this type of visa marry, they find it difficult to register and obtain residence permits for their children. The right to family reunification is contingent

upon a minimum salary of at least KD 650 for holders of No. 18 visas, who work in the private sector (for example, the clothing industry), and at least KD 450 for holders of No. 17 visas, who work for a ministry. Those who meet these criteria may apply directly to the immigration office and be joined by their spouses, but only as holders of No. 20 visas, in other words, as domestic workers, chauffeurs or skilled workers. Domestic workers are not entitled to family reunification.

4. Unemployment among Kuwaitis and promotion and protection of human rights by civil society

39. The following information has been corroborated by the Kuwaiti Human Rights Association, which emphasized to the Special Rapporteur that unemployment, and the influence of maids on the upbringing of children present Kuwait with social and economic difficulties. The public and private sectors compete for workers, and when the private sector finds that there are no Kuwaitis available to fill positions of responsibility, it recruits foreigners. It was repeatedly stressed that Kuwait recruits unskilled workers and trains them. Once trained by companies, some workers leave to seek better jobs in other countries.

40. Kuwaitis fear that the future may bring unemployment. It was pointed out that fundamentalists and other groups would like women to remain at home and be replaced by foreign manpower. According to the Kuwaiti Human Rights Association, Kuwait will have 3 million inhabitants - only a third of them Kuwaiti - in the year 2005. The Kuwaiti Graduates' Association has also expressed concern regarding the problem of unemployed Kuwaitis. According to the information it has provided to the Special Rapporteur, the country has 150,000 skilled workers, of whom 17 per cent are Kuwaiti and 83 per cent foreigners. Each year, 50,000 students graduate from the General Institute of Applied Studies and 20,000 from the University; there are also 10,000 unemployed with a general education, but the Government refuses to get rid of foreigners. The problem is allegedly that Kuwaitis are not finding the jobs they need. Since some Kuwaitis are not working in the areas for which they were trained, there are two types of unemployment: (a) "concealed unemployment", which results from the fact that the Government offers jobs because the Constitution requires it to find work for all Kuwaitis, but those taken on are not working in their own fields; (b) "manifest unemployment", where more than one person is hired to do the same job, resulting in high costs and inefficiency. Those interviewed by the Special Rapporteur made the following comments:

> "Kuwait cannot be said to be unfair to foreigners. They receive a good salary and training, and when they go home they have an advantage over others. Kuwait is training workers for other countries, and it is unfair to criticize it by exaggerating the slip-ups that occur in relations with migrant workers who, in any case, are better off in Kuwait than at home. ... Ill treatment here is a function of the needs of countries which have become exporters of manpower and of the competition between their representatives in Kuwait. ... We want to replace the foreigners with Kuwaitis because our own people are unemployed. Economists think it will be difficult to do this because a

distinction must be made between domestic work, which Kuwaitis refuse to do, and the skilled jobs which they hope to obtain but which require a long period of training."

41. Kuwaitis are aware of the problems posed by the Bidun and by the almost inescapable need for foreign workers, both skilled and unskilled. Most of those interviewed by the Special Rapporteur agree that "human rights, including those of prisoners since they are human beings, must be respected, all the more so when the people in question are domestic workers who live with the families for whom they work and when it is merely a matter of disputes between employer and employee". They value Kuwait's reputation as the most open, democratic and hospitable of countries. The Kuwaiti Human Rights Association, a branch of the Arab Organization for Human Rights, which has its headquarters in Cairo, has committed itself to the promotion of human rights. The Association has not yet been recognized by the Government, it says that NGOs have no official status in Kuwait. It cooperates with the National Assembly's Human Rights Committee and has placed before the National Assembly a bill which would grant it recognition as the National Human Rights Association. The bill has been considered but has not yet been passed.

42. There is also a progressive party, composed of the élite, writers and journalists, which monitors respect for human rights and, through publications and in the press, criticizes and castigates the Government and exposes ill treatment of foreign and, particularly, domestic workers. Courses on human rights are offered by the University, and many of the professors in the Faculty of Law are advisers to the Government and the National Assembly.

II. BIDUN, AN EVOLVING CONCEPT

43. The Special Rapporteur will attempt to clarify a problem which appears simple but has been complicated by Kuwait's political history and its conflicting and incoherent legislation. His explanation is based on interviews with various individuals, both official and non-official and, in particular, on his meetings with officials from the Ministries of the Interior and Social Affairs, the National Assembly's Human Rights Committee, the Chairman of the committee responsible for dealing with cases involving illegal residents, university professors and journalists. From those meetings, the following picture emerged.

A. A policy of national assimilation and integration

44. The peoples of Kuwait came from Arabia about 200 years ago; they include nomads, shepherds and pearl fishers. The discovery of oil in 1946 produced a flood of migrant workers and other persons from neighbouring countries. The Act governing nationality and the residence of foreigners was adopted in 1959. Under that Act, (a) anyone who settled in Kuwait prior to 1920 is considered a native-born Kuwaiti; (b) anyone who arrived after 1920 is considered a naturalized Kuwaiti; (c) pursuant to article 25 (d), nomads are exempt from the need for entry visas and residence permits and may come and go as they wish.

45. It was later decided that there was a lacuna in the Act, and article 25 (d) was deleted. As a result, some Bidun who had ceased to wander

and had settled in Kuwait found themselves undocumented and with no specific nationality. In addition to these historical Bidun, some foreigners entered Kuwait, and then hid or destroyed their papers in order to claim to be Kuwaiti and benefit from the country's prosperity and, in particular, its social benefits.

46. The question was, and remains, how to find an administrative solution to the problem of the Bidun. To that end, a distinction was made between two categories of persons: (a) those considered entitled to Kuwaiti nationality because one or more of their relatives are nationals of that country; (b) those who have not been proved to have any foreign nationality and who will be granted a residence permit once they are issued a passport from their own, or some other, country.

47. In 1960, 1970 and 1980, the Government placed all such individuals on an equal footing with Kuwaiti citizens. From an administrative point of view, a distinction was made between original Kuwaitis and Kuwaitis with "temporary passports", who were listed in censuses as "local residents". Original Kuwaitis and local residents enjoyed the same social, education and medical benefits free of charge and were permitted to join the army and the police.

B. Exclusion and marginalization

48. This situation continued until 1986, when the holders of temporary passports were pressured to prove their nationality. Consequently, the temporary passport was eliminated and local residents were no longer permitted to travel. In 1961, independence was proclaimed, putting an end to the British protectorate established in 1899. In 1963, a new Nationality Act was adopted, basing nationality on jus sanguinis but considering that only those whose names appeared in the 1965 census were Kuwaiti. Anyone who claimed to have been in Kuwait at that time was required to supply proof of the fact, so that some members of families were recognized as Kuwaiti while others were not.

49. The Act of 1959 has not been correctly applied. One committee accepts a person as Kuwaiti while another says that his brother is not Kuwaiti. Until 1985, they were all considered Kuwaiti. Before that date, a child born of a Kuwaiti mother and a Bidun was considered Kuwaiti. This provision has been repealed, and such children have become stateless. There are cases where, in a single family, children under the age of 18 become Kuwaiti while those over that age remain Bidun.

C. Nationalization and the search for foreign nationalities

50. The Bidun make up a third of the army, where they occupy important and sensitive positions. Most of them have been naturalized; after the liberation, some were transferred to less sensitive posts at the same pay. A naturalization policy was established for them, and their situation is better than that of civilian Bidun.

51. The 651 prisoners of war being held in Iraq include about 100 Bidun. Their families receive 70 per cent of their pay, and the remaining 30 per cent is held in escrow for them. They receive US$ 1,500 per month from the POW committee, which also guarantees them free social services.

52. The persons interviewed by the Special Rapporteur told him that, since the liberation, many Bidun had admitted their true nationality in order to obtain a residence permit, and that the Government encourages Bidun to register their nationality in order to formalize their situation; as a result, it is estimated that the number of Bidun has dropped from 250,000 to about 120,000. In cases where the Government does not grant them naturalization, it assists them in acquiring the nationality of some other country with which it conducts negotiations with a view to ensuring a continuing supply of the foreign manpower it needs.

53. In reply to the Special Rapporteur's question whether the Bidun were a homogeneous, indigenous group and/or made up of Arabs from the Gulf, he was told that while most of them were Arabs, some were Iranians, Iraqis or Asians. In any case, all those who were unable to produce documents proving that they had been in Kuwait before 1920 or included in the 1965 census are regarded as undocumented and are termed "illegal residents". Some of them, therefore, are stateless in their own country.

54. The allegation that the Bidun are confined to a particular region of the country, a "no man's land" between Kuwait and Iraq, was categorically denied. "If we didn't trust them, why would we place them in such a strategic area?" asked one of those interviewed by the Special Rapporteur, adding that there were no restrictions on the Bidun's movements; some of them, of course, lived in poor neighbourhoods, but "only for financial reasons". Others, on the contrary, were very rich and ran large businesses, using Kuwaitis as front men; those who were members of the army or public service employees were sometimes better paid than Kuwaitis. Some had requested naturalization, and their applications were under consideration.

55. Prior to the invasion, Bidun accounted for 80 per cent of the Kuwaiti army. In a speech before the National Assembly, the Second Deputy Prime Minister stated that many of them had allied themselves with the invader and, as a result, had fled to Iraq, the country from which most of them had come. Others had fought on the Kuwaiti side and therefore had the right to live in the country.

56. Some claim that the Bidun had been suspected of treason and therefore ousted from the army, had forfeited all their social rights, including the right to education and to free medical care, and were unable to find jobs.

D. Detention

57. During the Special Rapporteur's visit to the Talha prison, he met and spoke with Bidun who were being detained while awaiting a ruling on their possible expulsion. Other prisoners included "stateless" Bidun and "illegal" residents - foreigners who had entered the country clandestinely in search of work.

58. During this visit, the Special Rapporteur was informed that there were 581 detainees, 39 of whom had arrived that day. Some were accused of having committed crimes, of compromising State security or complicity with the enemy; others were asylum-seekers or were awaiting refoulement as a result of an administrative or judicial decision.

59. A nearby centre housed 177 women prisoners. Male prisoners are permitted to visit their wives and could receive family visits on Wednesdays and Sundays. The period of detention is abnormally long, varying from one week to six years, according to reports based on a survey of the prisoners. Reasons for their detention varied: one said he had "become undocumented" after living and working in Kuwait for 38 years; another, who claimed that his father and grandfather had been born in Kuwait, had been imprisoned for five years for having testified at the trial of his brother, a Kuwaiti accused of collaborating with the enemy; yet another was accused of illegal possession of weapons.

60. It seems that the question of the Bidun could have been settled in the period since independence. A series of commissions examined the problem in 1965, 1975, 1985 and 1991 but postponed solutions by adopting increasingly restrictive measures with regard to the granting of Kuwaiti nationality. Since the invasion of the country, the Government has become even more cautious in dealing with Bidun claims to Kuwaiti nationality.

61. It should be noted that, from 1986 until the Gulf War, Kuwait had no National Assembly. The new National Assembly which was constituted in 1992 and civil society (some of the progressive élite, writers, the press and pro-democracy movements) are pressuring the Government to resolve the problem of the Bidun, which has assumed international proportions owing to the activities of human rights organizations after the liberation as a result of the mobilization of the international community acting through the United Nations.

62. The committee at present responsible for dealing with cases of illegal residents was established in 1993. Its meetings are confidential and as yet no official information has been released. The Special Rapporteur gathered from his meeting with its Chairman that several recommendations for naturalization had been presented to the Government.

63. The authorities seem concerned by the question of the Bidun and have promised to find a definitive solution to the problem so that the term Bidun can be erased from Kuwait's social, economic and human rights vocabulary. Efforts are therefore being made and should be encouraged.

III. CONCLUSIONS AND RECOMMENDATIONS

64. The Kuwaiti Government has demonstrated its awareness of these human rights violations and manifestations of racial discrimination and xenophobia. It appears open to and mindful of the criticisms and recommendations made to it with a view to finding a definitive solution to the problem of the Bidun and to improving the legislation on migrant and, in particular, domestic workers.

65. Kuwait is the only country in the Gulf with an elected parliament. A parliamentary committee on human rights was established on 25 November 1992. Kuwait has the most advanced Constitution in the region and has ratified numerous human rights conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination.

66. Kuwait is committed to the advancement of women; for example, it is proud of having placed women in posts of responsibility: a Secretary of State for Higher Education, a University "director" and the Kuwaiti Ambassadress to South Africa. However, the Committee on Women and Development deplores the fact that only 6-8 per cent of decision-making posts are held by women, that, out of 4,000 government employees, there are only 200 women in administrative and managerial posts and that women have no political rights although, after a relentless struggle, this situation is being changed.

67. There are no signs of discrimination against foreigners in Kuwait, but rather an unacknowleged "national preference" on the part of a people that is a minority in its own country and sensitive to a foreign presence that massively outweighs its own in the field of employment. The legislative and social systems, conflicting and incoherent, result in the exploitation of workers, particularly unskilled and domestic workers. There are suggestions of non-violent xenophobia aimed at protecting Kuwaitis from foreigners. The prisoners at the Dasma Detention Centre and the Talha prison informed the Special Rapporteur that, in cases of conflict between a Kuwaiti employer and his employee or servant, the employee is imprisoned before any investigation is made and the Kuwaiti employer's statements are always accepted as fact. The administration has extremely broad powers, and there are no judicial guarantees to protect employees, undocumented persons and Bidun. The situation of foreigners and, in particular, that of unskilled and domestic workers, is a source of particular concern and is linked to the fact that there is no labour legislation guaranteeing the rights of all workers. Uniform, unambiguous legislation conforming to the international conventions ratified by Kuwait and guaranteed by an equitable system of justice, would make it possible to deal with the situation of foreigners on the Kuwaiti job market and thus ensure respect for human rights.

68. In the interests of Kuwait's reputation, the question of the Bidun, persons with no specific nationality or illegal residents, should be settled once and for all in an equitable and humane fashion.

69. The Special Rapporteur would like to reiterate the recommendations that he addressed to the Government at the end of his mission:

(a) That priority should be given to finding a definitive, humane and equitable solution to the problem of the Bidun, some of whom appear to be stateless in their own country, and to guarantee them access to social services;

(b) That legislation and a uniform labour code, in conformity with international conventions, should be adopted and its application enforced; to that end, that the Government should continue to cooperate with the International Labour Organization (ILO) in finalizing the bill prepared with ILO's technical assistance;

(c) That a national agency for the employment and recruitment of foreign skilled and unskilled labour and domestic workers should be created. A public agency of this nature would deal directly with the countries which export manpower and domestic workers, and replace the many private agencies at present active in this area;

(d) That Kuwait should cooperate with the countries which export domestic workers by offering instruction in conversational Arabic so as to facilitate social communication and avoid conflicts resulting from linguistic and cultural problems and incomprehension;

(e) That regulations and practical measures to ensure regular payment of wages should be adopted;

(f) That conditions for the detention and expulsion of persons whose presence is not authorized by law should be improved by providing them with legal protection and assistance;

(g) That cultural programmes on the countries that export manpower and domestic workers should be produced and broadcast on radio and television;

(h) That efforts to promote and strengthen democracy should be continued;

(i) That the United Nations human rights conventions and, in particular, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, should be ratified.

Notes

1/ See Middle East Watch/Women's Rights Project, "Punishing the Victim: Rape and mistreatment of Asian maids in Kuwait". (New York, August 1992.)

2/ Prisoners of War.

3/ Figures provided by the Civil Records Office.

4/ Prior to the invasion, there were about 400,000 Palestinians. Many of them collaborated with the Iraqi army during the invasion and subsequently left Kuwait. Only about 75,000 Palestinians remain.

Annex

PROGRAMME OF THE VISIT

Saturday 16 November 1996

Arrival in Kuwait City

Sunday 17 November 1996

Meeting with Mr. Adel Hussain Al-Jassam,
Diplomatic Attaché, Ministry of Foreign Affairs

Monday 18 November 1996

Meeting with H.E Ambassador Abdul Hamid Al-Awadhi,
Director of International Organizations Department, Ministry of Foreign Affairs

Meeting with Mr. Adalat Khan, Officer-in-charge of the UNDP Office
Ms. Nevine Guirgis, Deputy Representative
Ms. Hoda Yakoub

Tuesday 19 November 1996

Meeting with Colonel Mohammad J. Al-Fahad,
Director of International Organizations Liaison Office, Ministry of the Interior

Visit to Dasma Deportation Centre

Wednesday 20 November 1996

Considerations of cases submitted to the Special Rapporteur

Meeting with Mr. Abdul-Rhaman Y. Al-Mazroue,
Under Secretary, Ministry of Social Affairs and Labour and
Mr. Mohammed Ali Al-Kanderi, Assistant Under-Secretary for Cooperative Affairs

Thursday 21 November 1996

Meeting with Ms. Betty Lippold, Reporter, Arab Times

Friday 22 November 1996

Visit of migrant workers' residence areas

Observation of migrant workers' social life in the centre of Kuwait City

Saturday 23 November 1996

Meeting with Mr. Jamal Ahmed Al-Shehab, Assistant Under Secretary for Justice Palace Affairs and International Relations

Meeting with Ms. Ofelia M. Castro, Assistant Labour Attaché, Embassy of the Philippines

Meeting with Mr. W.P. Gunapala, First Secretary for Labour and Welfare, Embassy of Sri Lanka

Meeting with Mr. Reddy Y. Madineni, Attaché Labour Department, Embassy of India

Meeting with Mr. A.T.K.M. Ismail, First Secretary for Labour, Embassy of Bangladesh

Sunday 24 November 1996

Meeting with Mr. Mustapha Omar, Chief of Mission, UNHCR

Meeting with Mr. Ghanem Al-Goumhour, President
Mr. Hussein Al-Kallaf, Rapporteur
Dr. Fahd Al-Khanna, Mr. Samy Al-Minayes, Mr. Ahmed Al-Nassar and Mr. Farid Abdallah Al-Asfour, Members of the Committee on the Defense of Human Rights of the National Assembly

Meeting with Mr. Muzaffar Abdallah
Journalist, Al Talea

Meeting with Dr. Aboubakr Abdeen Badawi,
Country Representative and Regional Vocational Training Adviser,
International Labour Organization

Monday 25 November 1996

Meeting with Professor Shamlan Y. Al-Essa,
Department of Political Science, University of Kuwait

Meeting with Dr. Rashid Hamad Al-Anezi, Assistant Dean, University of Kuwait; Dr. Abdul Hady Abdul Aziz, Head, Department of International Law; Dr. Thama, Specialist in Labour Law

Meeting with Mr. Mubarak Al-Adwani, Manager, Public Relations and Information, and Mr. Zaid H. Al-Zaid, Officer, Kuwait Institute for Scientific Research

Meeting with Mr. Jassem A. Al-Qatami, Chairman and Mr. Abdel Ali Nasser, Vice-Chairman, Kuwait Society for Human Rights

Tuesday 26 November 1996

Meeting with Colonel Mohamed Ibrahim Al Siba'i,
Chairman Committee for the Affairs of Illegal Residents (Bidun)

Visit to Talha Prison

Wednesday 27 November 1996

Meeting with H.E Ambassador Khaled Al-Garallah, Under-Secretary of State, and H.E. Ambassador Abdul Hamid Al-Awadhi, Director of International Organizations Department, Ministry of Foreign Affairs

Meeting with Mr. Farouk Al-Nouri,
Director, Legal Department, Ministry of Foreign Affairs

Meeting with Ms. Kholoud Al-Feeli, Diplomatic Reporter,
Kuwait News Agency (KUNA)

Thursday 28 November 1996

Departure